

CUMULATIVE DIGEST

CH. 33 JUVENILE PROCEEDINGS

- §33-1 [Pretrial Detention](#) (currently no updates)
- §33-2 [Notice and Jurisdiction](#)
- §33-3 [Transfer of Case from Juvenile Court to Adult Criminal Court](#)
- §33-4 [Right to Counsel](#)
- §33-5 Petitions, Adjudicatory Hearings, Adjudications, and Admissions
 - (a) [Generally](#)
 - (b) [Petitions](#)
 - (c) Adjudicatory Hearings and Adjudications
 - (1) [Generally](#)
 - (2) [Adjudicatory Hearing – Speedy Trial](#) (currently no updates)
 - (d) [Admissions](#) (currently no updates)
- §33-6 Dispositions (Sentencing)
 - (a) [Generally](#)
 - (b) [Commitment to Department of Corrections \(DOC\), Juvenile Division](#)
 - (c) [Habitual Juvenile Offender](#)
 - (d) [Sentencing Where Juvenile Has Been Transferred to Adult Court for Prosecution](#)
 - (e) [Extended Juvenile Jurisdiction \(EJJ\)](#)
 - (f) Probation and Supervision
 - (1) [Generally](#)
 - (2) [Conditions of and Revocation/Termination of](#)
- §33-7 Appellate Concerns
 - (a) [Post-Trial, Post-Plea, and Post-Sentencing Motions in Juvenile Court](#)
 - (b) [Other](#)
- §33-8 [Freedom of the Press and Privacy Issues](#) (currently no updates)
- §33-9 [Miscellaneous Matters](#)

§33-1

Pretrial Detention

[Top](#)

§33-2

Notice and Jurisdiction

In re Luis R., 239 Ill.2d 295, 941 N.E.2d 136 (2010)

The juvenile court dismissed a petition alleging that the respondent was a delinquent minor on the ground that there was “no jurisdiction under the Juvenile Court Act for this proceeding.” The motion to dismiss had asserted that the court lacked jurisdiction over respondent’s person. The alleged offense occurred before respondent reached his 17th birthday, but respondent was 21 when the petition was filed.

The Juvenile Court Act contains a section entitled “Exclusive jurisdiction,” which provides that proceedings may be instituted under the Act concerning any minor who prior to the minor’s 17th birthday has violated or attempted to violate any federal or state law or municipal or county ordinance. 705 ILCS 405/5-120. The Act defines a “minor” as “a person under the age of 21 subject to this Act.” 705 ILCS 405/5-105(10).

The Supreme Court interpreted the court’s ruling and the parties’ arguments on appeal to address only subject-matter jurisdiction, but concluded that the court had both subject-matter and personal jurisdiction.

Subject-matter jurisdiction is a court’s power to hear and determine cases of the general class to which the proceeding in question belongs. Generally, a circuit court’s subject-matter jurisdiction is conferred entirely by the state constitution. The Illinois Constitution provides that circuit courts have original jurisdiction of all justiciable matters except in those instances in which the Supreme Court has original and exclusive jurisdiction. Ill.Const. 1970, Art. VI, § 9. A “justiciable matter” is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching on the legal relations of parties having adverse legal interests. A defectively-stated claim is sufficient to invoke the court’s subject-matter jurisdiction, as subject-matter jurisdiction does not depend on the legal sufficiency of the pleadings.

The Supreme Court held that the delinquency petition alleged the existence of a justiciable matter on its face because it definitely and concretely alleged a claim under the Juvenile Court Act that respondent was delinquent. The Supreme Court recognized that there is a potentially fatal defect in the delinquency petition, but concluded that subject-matter jurisdiction had nothing to do with the legal sufficiency of the petition, only whether it was filed in the proper tribunal. The phrase “exclusive jurisdiction” in § 5-120 of the Juvenile Court Act is only a grant of authority to the State, defining the persons against whom the State can initiate delinquency proceedings. Once the legislature creates a justiciable matter, the circuit court’s jurisdiction to adjudicate the matter derives exclusively from the constitution and cannot be limited by statute.

A party has personal jurisdiction imposed on him either by the effective service of summons or consent to personal jurisdiction by his appearance. Respondent consented to the court’s jurisdiction over his person when his counsel filed a general appearance on his behalf, even though he was not served with summons.

Because the trial court had both personal and subject-matter jurisdiction, the Supreme Court reversed the order of dismissal and remanded for further proceedings.

In re Luis R., 2013 IL App (2d) 120393 (No. 2-12-0393, 6/28/13)

1. 705 ILCS 405/5-120 provides that delinquency proceedings “may be instituted . . . concerning any minor who prior to the minor’s 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance.” The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

The court acknowledged that under **In re Luis R.**, 239 Ill.2d 295, 941 N.E.2d 136 (2010), the juvenile court had subject matter jurisdiction, personal jurisdiction, and inherent authority to adjudicate delinquency petitions. The court concluded, however, that the statutory authorization for bringing a delinquency petition does not extend to a person who has reached the age of 21 even if the alleged criminal activity occurred while the person was a minor.

2. The court also rejected the argument that the trial court should have considered the State’s motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The State argued that the juvenile court had jurisdiction over the proceedings, and therefore could order a discretionary transfer to criminal court.

The court concluded that the prosecution’s motion for discretionary transfer to criminal court “is a legal nullity if the motion is filed after the respondent reaches the age of 21.” The court also concluded that because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court. “The State’s authority for requesting a discretionary transfer from juvenile court to criminal court is derived from the [Juvenile Court Act], and without the authority to institute proceedings in the first place, the State may not obtain a transfer under the Act.”

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

People v. Baum, 2012 IL App (4th) 120285 (No. 4-12-0285, 11/8/12)

Section 5-120 of the Juvenile Court Act, entitled “Exclusive jurisdiction,” defines the persons and crimes covered by delinquency proceedings. The State may institute juvenile delinquency proceedings “concerning any minor who prior to the minor’s 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law or municipal or county ordinance.” 705 ILCS 405/5-120. Subject to enumerated exceptions, “no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State.” 705 ILCS 405/5-120.

Defendant was no older than 16 when he allegedly committed criminal sexual assault, even though he was 19 when the criminal information was filed against him. Therefore, the State was not authorized to prosecute him as an adult and the court did not err in dismissing the information after the State refused the court’s offer to transfer the case to juvenile court.

It was not accurate for the trial court to rule that it lacked jurisdiction rather than that the criminal charges could not be filed because defendant fell outside the class of persons against whom a criminal charge could be filed. The court had subject-matter and personal

jurisdiction because: (1) the criminal charges alleged a justiciable matter under the Criminal Code over which circuit courts have the authority to preside, and (2) by appearing in these proceedings, defendant waived any objection based on the court's lack of personal jurisdiction.

People v. Harmon, 2013 IL App (2d) 120439 (No. 2–12–0439, 10/28/13)

The exclusive jurisdiction provision of the Juvenile Court Act (705 ILCS 405/5–120) provides that 17-year-olds charged with felonies must be prosecuted and sentenced as adults, without consideration of their youthfulness and individual circumstances. The court rejected the argument that the exclusive jurisdiction statute violates the Eighth Amendment and due process under **Roper v. Simmons**, 543 U.S. 551 (2005) (the Eighth Amendment prohibits death penalty for juvenile offenders), **Graham v. Florida**, 560 U.S. 48 (2010) (the Eighth Amendment forbids a sentence of life without the possibility of parole for juveniles who did not commit homicide), **J.D.B. v. North Carolina**, 564 U.S. ___, 131 S. Ct. 2394 (2011) (a child's age if known or objectively apparent to reasonable police officer is relevant in determining whether the child is in custody for **Miranda** purposes), and **Miller v. Alabama**, 567 U.S. ___, 132 S. Ct. 2455 (2012) (the Eighth Amendment prohibits a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders). Defendant argued that all four cases hold that fundamental differences between juvenile and adult minds make children under 18 less culpable than adults for the same offenses, and that juvenile offenders must therefore be afforded additional constitutional protections.

1. The court found that the exclusive jurisdiction statute does not violate the Eighth Amendment prohibition against “cruel and unusual” punishment. The court stressed that **Roper**, **Graham**, and **Miller** hold that the trial court must have an opportunity to consider mitigating circumstances before sentencing juveniles to the “harshest possible penalty.” However, the sentencing issues involved in those cases are not raised by the exclusive jurisdiction statute, which concerns only whether the minor will be tried in juvenile or adult court.

The court also noted that Illinois courts have rejected defendant's argument when raised to challenge the automatic transfer provisions of the Juvenile Court Act (705 ILCS 405/5–130). The court held that the same rationale applies to the exclusive jurisdiction statute.

2. The court also rejected the argument that because minors have a fundamental interest in not being automatically treated as adults, the exclusive jurisdiction provision violates substantive due process under the federal and state constitutions. The court reiterated that the reasoning of Illinois precedent upholding the automatic transfer statute against similar challenges applies to the exclusive jurisdiction provision. The court also noted that **Roper**, **Graham**, and **Miller** concerned Eighth Amendment issues rather than due process, and that the statutes involved in those cases involved sentencing rather than the forum in which an alleged offender is tried, the focus of the exclusive jurisdiction statute.

(Defendant was represented by Assistant Defender Brian Koch, Chicago.)

People v. Markley, 2013 IL App (3d) 120201 (No. 3-12-0201, 1/31/13)

1. 705 ILCS 405/5-125 provides that “any minor alleged to have violated a traffic, boating, or fishing game law . . . may be prosecuted for the violation and if found guilty punished under any statute or ordinance relating to the violation,” without reference to Juvenile Court Act procedures, except that any detention must comply with the Juvenile Court Act. The court found that the plain language of the statute affords prosecutors discretion to file traffic charges against minors in either juvenile or adult court. The court rejected the argument that under **People v. Sims**, 104 Ill. App. 3d 55, 432 N.E.2d 633 (4th Dist. 1982),

traffic offenses committed by a juvenile may not be prosecuted in adult court unless the offense is punishable by fine only.

The court noted that **Sims** was decided under a prior version of the concurrent jurisdiction statute, and that the amended version of the statute expressly gives discretion to prosecutors to file traffic violations in either juvenile or adult court.

2. As a matter of first impression, the court rejected the argument that the concurrent jurisdiction statute violates due process because there is no requirement that the minor's youthfulness be considered before a case is filed in adult court. The court concluded that the due process right of a minor to have her age considered before a case is prosecuted in adult court applies where the juvenile court has the power to waive its jurisdiction and allow a minor to be transferred to juvenile court. Section 5-125 does not concern the trial court's power to transfer juvenile cases, but only the prosecutor's discretion in filing cases.

The court also concluded that there is a rational basis for §5-125 because the offenses which can be filed in the criminal court are adult by nature, and that the discretion given to prosecutors under the statute is consistent with the broad discretion generally given to prosecutors to decide whether to file charges and which charges to file.

3. The court also rejected the argument that §5-125 violates the Eighth Amendment and the proportionality clause of the Illinois Constitution. Both the Eighth Amendment and the proportionality clause concern the constitutionality of sentencing statutes. Neither provision affects statutes giving prosecutors discretion to charge certain crimes as adult offenses.

[Top](#)

§33-3

Transfer of Case from Juvenile Court to Adult Criminal Court

People v. Patterson, 2014 IL 115102 (No. 115102, 10/17/14)

The automatic transfer statute requires juveniles who are at least 15 years old and are charged with one of the enumerated offenses to be prosecuted in adult criminal court. The enumerated offenses are first degree murder, aggravated battery with a firearm (if the minor personally discharged the weapon), armed robbery with a firearm, aggravated vehicular hijacking with a firearm, and aggravated criminal sexual assault. 705 ILCS 405/5-130.

Defendant argued that the transfer statute either alone or in conjunction with the consecutive sentencing scheme (730 ILCS 5/5-8-4(a)(ii)) and the truth in sentencing statute requiring him to serve at least 85% of his sentence (730 ILCS 5/3-6-3(a)(2)(ii)), violated (1) the eighth amendment and the proportionate penalties clause of the Illinois Constitution, and (2) state and federal due process, because this statutory scheme does not take the distinctive characteristics of juveniles into account.

1. The eighth amendment protects defendants against cruel and unusual punishments, while the Illinois proportionate penalties clause similarly bars the imposition of unreasonable sentences. U.S. Const., amend. VIII; Ill. Const. 1970, art. I §11. The Illinois proportionate penalties clause is co-extensive with the eighth amendment. Neither clause applies unless a punishment is imposed.

Defendant argued that three recent United States Supreme Court cases, **Roper v. Simmons**, 543 U.S. 551 (2005), **Graham v. Florida**, 560 U.S. 48 (2010), and **Miller v. Alabama**, 567 U.S. ____ (2012), make it unconstitutional to apply adult sentencing standards to juveniles without first taking into account the distinctive characteristics of juveniles.

The court rejected this argument, holding that access to juvenile court is not a constitutional right and trying a defendant in juvenile or criminal court is purely a matter of procedure. Even accepting the assertion that criminal courts always involve lengthier sentences and harsher prison conditions, the court found nothing in defendant's argument that would convert a procedural statute into a punitive one.

In previous cases, the court had already determined that the purpose of the transfer statute was to protect the public, not to punish defendants. The automatic transfer statute reflects the legislature's reasonable decision that criminal court is the proper venue for juveniles charged with certain felonies, and the court declined to second-guess the validity of the legislature's judgment.

2. The court also rejected defendant's argument that the combination of the transfer statute and the applicable sentencing provisions was unconstitutional as applied to non-homicide offenders. Here defendant was sentenced to three consecutive terms of 12 years imprisonment for a total of 36 years, and must serve at least 85% of his sentence. Although lengthy, the court did not find that term comparable to either the death penalty or natural life imprisonment, the sentences involved in **Roper, Graham, and Miller**. The court thus refused to extend the reasoning of those cases to the sentence imposed in this case.

3. The court also rejected defendant's due process attack. The court noted that it had already previously upheld the automatic transfer statute against a due process challenge in **People v. J.S.**, 103 Ill. 2d 395 (1984) and **People v. M.A.**, 124 Ill. 2d 135 (1988). It found defendant's reliance on **Roper, Graham, and Miller**, to be inapplicable since those cases involved the eighth amendment, not due process.

The dissenting justice would have found that the automatic transfer statute was punitive and violated the eighth amendment and the proportionate penalties clause.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

In re Luis R., 2013 IL App (2d) 120393 (No. 2-12-0393, 6/28/13)

1. 705 ILCS 405/5-120 provides that delinquency proceedings "may be instituted . . . concerning any minor who prior to the minor's 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance." The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

The court acknowledged that under **In re Luis R.**, 239 Ill.2d 295, 941 N.E.2d 136 (2010), the juvenile court had subject matter jurisdiction, personal jurisdiction, and inherent authority to adjudicate delinquency petitions. The court concluded, however, that the statutory authorization for bringing a delinquency petition does not extend to a person who has reached the age of 21 even if the alleged criminal activity occurred while the person was a minor.

2. The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The State argued that the juvenile court had jurisdiction over the proceedings, and therefore could order a discretionary transfer to criminal court.

The court concluded that the prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." The

court also concluded that because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court. “The State’s authority for requesting a discretionary transfer from juvenile court to criminal court is derived from the [Juvenile Court Act], and without the authority to institute proceedings in the first place, the State may not obtain a transfer under the Act.”

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

People v. Fiveash, 2014 IL App (1st) 123262 (No. 1-12-3262, 4/22/14)

705 ILCS 405/5-120 provides that with certain exceptions, “no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State.” The court concluded that the plain language of §5-120 holds only a person who is under the age of 21 at the time of the prosecution may not be criminally prosecuted for offenses that occurred when he or she was under the age of 17. Thus, §5-120 does not prohibit the criminal prosecution of a defendant who was charged at the age of 23 for offenses which he committed at the ages of 14 and 15.

The court rejected the argument that it would be absurd to subject an adult to criminal punishment for a crime that occurred when he was 14, because such punishment would not have been permitted at the time of the offense. The court noted that 705 ILCS 405/5-805(3) grants the juvenile court discretion under certain circumstances to allow the criminal prosecution of a minor who is at least 13. Thus, even had defendant been charged when he was 14, he would not necessarily have been immune from criminal prosecution.

Defendant argued that allowing an adult defendant to be tried in criminal court for charges that he allegedly committed as a minor raises the possibility of a disparity in sentencing upon conviction. The court acknowledged that defendant raised a valid concern, but found that the issue was a policy matter to be resolved by the legislative rather than the judicial branch.

People v. Henderson, 2011 IL App (1st) 090923 (No. 1-09-0923, 11/17/11)

With certain limited exceptions, a minor under 17 years of age at the time of an alleged offense may not be prosecuted under the criminal laws of Illinois. 705 ILCS 405/5-120. One such exception is where a minor who at the time of the offense was at least 15 years of age and who is charged with an offense under §401 of the Controlled Substances Act while on a public way within 1000 feet of the real property comprising a school. 705 ILCS 405/5-130(2)(a). A criminal conviction of such a minor where a violation of §401 is committed within 1000 feet of a school, but not on a public way, is void because the court lacks the power to impose a criminal conviction where the Juvenile Act mandates a juvenile adjudication.

Defendant pleaded guilty to a violation of §401 committed within 1000 feet of a school, but that offense does not require as an element that it be committed on a public way. It could not be determined whether defendant’s indictment included a public-way allegation because the indictment was not included in the record on appeal. Construing any doubts arising from the missing indictment against the defendant, defendant did not demonstrate that his conviction was void.

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

People v. Jardon, 393 Ill.App.3d 725, 913 N.E.2d 171 (1st Dist. 2009)

1. In order to impose an adult sentence on a minor who was prosecuted as an adult but convicted only of an offense for which adult prosecution is not mandatory, the State must

request adult sentencing by a written motion filed within 10 days after the verdict is returned. (705 ILCS 405/5-130(1)(c)(ii)). As a matter of plain error, juvenile sentencing was required where the State filed its request for criminal sentencing more than 30 days after the verdict was returned. The court found that the 10-day requirement is mandatory rather than directory, and that an adult sentence imposed pursuant to an untimely request is void rather than merely voidable.

2. In addition, a minor who is convicted in an adult prosecution solely for offenses which are not subject to mandatory adult prosecution is regarded as a delinquent minor, and does not have a criminal conviction.

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

People v. Moore, 2011 IL App (3d) 090993 (No. 3-09-0993, 9/2/11)

1. 705 ILCS 405/5-805(3)(a) permits the transfer of a 13-year-old minor to adult court if the juvenile court determines, in its discretion, that there is probable cause to believe that the allegations in the transfer motion are true and that it is not in the best interests of the public to proceed under the Juvenile Court Act. The purpose of a transfer proceeding is to balance the best interests of the juvenile, particularly in terms of potential for rehabilitation, against the public's interest in being protected from crime.

In a transfer proceeding, the judge must weigh relevant statutory and nonstatutory factors. Among the relevant statutory factors are the age of the minor, any prior delinquent or criminal history, any history of abuse or neglect, any mental health, physical, or educational history, the circumstances of the offense (including whether there is evidence the minor possessed a deadly weapon), the advantages of treatment within the juvenile justice system (including facilities or programs particularly available in the juvenile system), the security of the public, the minor's history of services, whether the minor is likely to be rehabilitated before juvenile jurisdiction ends, and the adequacy of punishment or services under adult prosecution.

At the transfer hearing, the juvenile judge must receive and consider evidence as to each statutory factor listed under §5-805(3)(a). The judge should also consider critical nonstatutory elements, including the sentence that will result if the minor is convicted as an adult.

The trial court's ruling on a transfer petition is reviewed for abuse of discretion. When considering a transfer order, the reviewing court must determine whether there was sufficient evidence of each statutory factor to support the transfer order. A mere statement that all statutory factors have been considered is insufficient to affirm a discretionary transfer order.

2. Here, the trial court abused its discretion by ordering that a 13-year-old charged with armed robbery be transferred to adult court. The court found that the judge failed to adequately address two statutory transfer factors and one nonstatutory factor.

A. No evidence was presented at the transfer hearing concerning the availability and advantages of treatment in the juvenile system. Although the State presented the defendant's file from a previous juvenile probation disposition, that file merely discussed the services defendant received in the prior case. There was no evidence of the juvenile services that would be available to defendant in the instant case. Similarly, the judge did not consider defendant's prospects of rehabilitation by participating in juvenile services.

B. There was insufficient evidence to determine whether defendant possessed a deadly weapon, one of the statutory factors required to be considered under §5-805(3)(d)(iii)(E). Under Illinois law, the State may prove that a handgun is dangerous (or deadly) for purposes of armed robbery by presenting evidence that the weapon: (1) was loaded

and operable, or (2) was used or was capable of being used in a dangerous manner as a bludgeon or club. Here, there was no evidence that the gun was loaded - defendant told detectives that he did not think the gun was loaded, and the officer who recovered the weapon found that the magazine was empty and that the gun was inoperable.

Under these circumstances, the State was required to present evidence that the gun was used or could have been used as a club or bludgeon. Because it failed to do so, the judge erred by failing to consider that the defendant did not possess a deadly weapon.

C. The trial court also failed to consider a critical nonstatutory element – defendant’s potential sentence if tried as an adult. There was only a brief reference to the possibility of an enhanced sentence, with no mention that defendant faced a term of six to 30 years imprisonment enhanced by a mandatory 15-year addition for possessing a firearm.

Since three factors were not supported by the record or properly considered, the juvenile judge abused its discretion by ordering the defendant transferred to adult court. The transfer order was vacated and the cause remanded for further proceedings.

(Defendant was represented by Assistant Defender Tom Karalis, Ottawa.)

People v. Pacheco, 2013 IL App (4th) 110409 (No. 4-11-0409, 6/24/13)

1. In **Roper v. Simmons**, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment bars capital punishment for juvenile offenders. In **Graham v. Florida**, 560 U.S. 48 (2010), the court held that a life sentence without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. In **Miller v. Alabama**, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the court concluded that the Eighth Amendment prohibits a sentencing scheme which mandates a life sentence without the possibility of parole for juvenile offenders, even those convicted of homicide.

The court concluded that under the reasoning of **Roper**, **Graham** and **Miller**, neither the Eighth Amendment nor the proportionate penalties clause of the Illinois Constitution are violated by the Illinois statute mandating the transfer of juveniles who are at least 15 and who are charged with first degree murder (705 ILCS 405/5-130(1)(a)(i)), the automatic imposition of an adult sentence on a juvenile who is subject to the automatic transfer statute, or the application of truth-in-sentencing provisions to minors who are convicted of murder by accountability. The court concluded that the Supreme Court cases concerned only two sentences, death and life without the possibility of parole. The decisions do not require that legislatures and courts treat youths and adults differently in every respect and at every step of the criminal process.

Similarly, the court concluded that due process is not violated by the automatic transfer statute, although the trial court is not required to make an individualized determination whether a minor should be transferred and subjected to adult sentencing. The court acknowledged that automatic transfer of minors of a certain age to adult court may not be good policy, but held that only the legislative branch can determine whether a policy that meets constitutional requirements should be changed.

2. In dissent, Justice Appleton found that the mandatory transfer of 15 and 16-year-olds to adult court violates **Miller v. Alabama** because the trial court is not permitted to make an individualized determination whether a particular minor should be transferred to adult court.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

People v. Willis, 2013 IL App (1st) 110233 (No. 1-11-0233, 9/30/13)

The Appellate Court agreed that the constitutionality of the automatic-transfer

provision of the Juvenile Court Act (705 ILCS 405/5-130) bears revisiting in light of **Roper v. Simmons**, 543 U.S. 551 (2005), **Graham v. Florida**, 560 U.S. 48 (2010), and **Miller v. Alabama**, __U.S. __, 132 S. Ct. 2455 (2012). It saw a nationwide trend that might some day lead to the realization that a mandatory-transfer provision implicates constitutional rights. It recognized the logic of Justice Appleton's dissent in **People v. Pacheco**, 2013 IL App (4th) 110409, *leave to appeal allowed*, No. 116402 (9/25/13), that blanket transfer based on age is a flaw in the statute.

But the court adhered to the prevailing case law upholding the constitutionality of the statute, finding it would be a "stretch at the current time" to conclude otherwise.

(Defendant was represented by Assistant Defender Darrel Oman, Chicago.)

[Top](#)

§33-4

Right to Counsel

In re Danielle J., 2013 IL 110810 (No. 110810, 12/19/13)

Under 705 ILCS 405/5-615(l) and **In Veronica C.**, 239 IL 2d 134, 940 N.E.2d 1 (2010), a minor may request a continuance under supervision in a juvenile case before an adjudication of delinquency is made, provided that the minor stipulates to facts supporting the petition and there is no objection by the minor, a parent, a guardian, or the prosecutor. Here, the minor rejected the State's pretrial offer of a continuance under supervision, but requested such a continuance after she was adjudicated delinquent.

The trial court indicated that had the State's Attorney not objected, it would grant a continuance under supervision. The trial court then found that the provision of the statute requiring the State's Attorney's consent to a continuance under supervision was unconstitutional. The State appealed.

1. The Illinois Supreme Court found that the minor lacked standing to challenge the constitutionality of the requirement that the State's Attorney consent to a continuance under supervision. Because the minor was adjudicated delinquent before her attorney requested the continuance, and a continuance under supervision is statutorily precluded once an adjudication occurs, a continuance under supervision could not have been granted even had the prosecutor agreed. Because she was not adversely affected by the State's Attorney's objection to a continuance under supervision, the minor lacked standing.

2. However, the court concluded that defense counsel was ineffective for failing to request a continuance under supervision when it could have been granted, and that the trial court committed plain error where it believed that a continuance under supervision was the appropriate disposition but failed to broach the subject until a continuance was statutorily precluded.

The court remanded the cause for a new first-phase hearing at which the minor is to be properly advised that if she proceeds to trial and is unsuccessful, a continuance of supervision will be subject to the State's Attorney's approval. The minor will then be in a position to make an informed and knowing decision whether to accept the pretrial offer of a continuance under supervision, if that offer is reinstated. If she elects to go to trial, the minor will be able to request a continuance under supervision before the adjudication is announced.

People v. Austin M., 2012 IL 111194 (No. 111194, 8/30/12)

1. In abuse and neglect cases, the trial court is required to appoint a guardian *ad litem*,

who serves as an arm of the court. In an abuse and neglect proceeding, the guardian *ad litem* is required to meet with the minor, assess the circumstances, determine what disposition might be in the minor's best interests, and report back to the court. A guardian *ad litem* represents the best interests of the minor and does not function as the attorney for the ward.

Under 705 ILCS 405/1-5(1), when a guardian *ad litem* in an abuse and neglect proceeding is also an attorney, separate counsel need not be appointed to represent the minor "unless the court finds that the minor's interests are in conflict with what the guardian *ad litem* determines to be in the best interest of the minor."

2. There is no requirement that a guardian *ad litem* be appointed in delinquency proceedings; however, a guardian *ad litem* may be appointed if the minor has no interested parent or guardian, if the interests of the parents differ from that of the minor, or if counsel believes that the minor is unable to act in his or her own best interests. (705 ILCS 405/2-17(3)) Just as in abuse and neglect cases, in delinquency proceedings the guardian *ad litem* focuses on the best interests of the minor rather than act as the minor's attorney.

An alleged delinquent minor is statutorily and constitutionally entitled to representation by a defense attorney, and is not permitted to waive representation and proceed without the assistance of counsel. (705 ILCS 405/5-170(b)) Such representation can be rendered only by an attorney "whose singular loyalty is to the defense of the juvenile." Where a single attorney attempts to fulfill the role of guardian *ad litem* as well as defense counsel, "the risk that the minor's constitutional and statutory right to counsel will be diluted, if not denied altogether, is too great." Thus, in a delinquency proceeding a single attorney cannot function both as defense counsel and as guardian *ad litem*.

3. A *per se* conflict of interest exists where the minor's counsel in a delinquency proceeding simultaneously functions as both defense counsel and guardian *ad litem*. A *per se* conflict of interest occurs where certain facts about a defense attorney's status engender, in and of themselves, a disabling conflict. If a *per se* conflict is established, reversal of the adjudication is required even if it cannot be shown that the conflict affected the attorney's actual performance.

4. The court concluded that defense counsel suffered from a *per se* conflict of interest, although he was hired by the parents of two minor respondents to act as defense counsel and not appointed as a guardian *ad litem*, where he mistakenly perceived his role as to provide "hybrid" representation encompassing both representation as defense counsel and focusing on the "best interests" of the minors. Defense counsel made several statements indicating his belief that his role was "seeking the truth" and acting in the minors' best interests. In addition, counsel failed to correct the trial court's explanation of counsel's role as a "classic description of a guardian *ad litem*."

The court also noted that counsel made no effort to suppress the alleged admission of the only minor who was found guilty, even though the trial court found the admission to be the only credible evidence of guilt. Finally, in closing argument counsel failed to emphasize the contradictory evidence concerning whether the statement had been made or to urge the trial court to discount the alleged statement, giving further credence to the notion that he believed his role to be advancing the minor's best interests rather than to seek an acquittal.

5. Justices Freeman and Karmeier concurred in the result, finding that the State failed to meet its burden of proof in establishing the *corpus delicti* of the crime. *Corpus delicti* cannot be established solely based on the defendant's statement. Instead, the statement must be corroborated by independent evidence.

The concurring justices concluded that where the trial court specifically found that the only corroborating evidence offered by the State was not credible, the prosecution failed to

carry its burden of proof to prove that a crime had occurred. Thus, the delinquency adjudication should be reversed outright.

The delinquency adjudication was reversed and the cause remanded for further proceedings.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re Austin M., 403 Ill.App.3d 667, 941 N.E.2d 903 (4th Dist. 2010)

1. The court rejected the argument that defense counsel labored under an actual conflict of interest because the respondent's parents directed counsel's representation in a way that was contrary to the respondent's interests. Defense counsel represented only the respondent; in fact, the trial court specifically admonished the parents that counsel was not representing them. Furthermore, counsel's remarks during the proceedings did not suggest that his consultation with the parents in any way contradicted the interests of the minor.

The court also stated that in juvenile cases, defense counsel must not only protect the juvenile's legal rights but also recommend a disposition that is in the juvenile's best interest. The latter duty may require consultation between counsel and the parents.

2. There was no conflict of interest in counsel's dual role as defense attorney and guardian *ad litem*. First, the court rejected the State's argument that counsel did not act as guardian *ad litem*. Although the trial judge never expressly appointed counsel as guardian *ad litem*, both the trial court and defense counsel conceived the attorney's role as guardian *ad litem* (i.e., safeguarding both the minor's and society's best interests), rather than as a traditional defense attorney. Because counsel in fact functioned as guardian *ad litem*, the Appellate Court elected to reach the issue although defense counsel was never formally appointed.

Because 705 ILCS 405/1 contemplates that a single attorney can be both guardian *ad litem* and defense counsel "unless the court finds that the minor's interests are in conflict with what the guardian *ad litem* determines to be in the interest of the minor," the court rejected the argument that it is necessarily a conflict of interest for an attorney to act both as guardian *ad litem* and defense counsel. The court acknowledged that other jurisdictions hold that a *per se* conflict exists where one person is both guardian *ad litem* and defense counsel, but concluded that Illinois follows a different rule.

Furthermore, counsel's dual role did not constitute an actual conflict in this case. An actual conflict exists when some specific defect in defense counsel's strategy, tactics or decision making is attributable to a conflict of interest.

Although defense counsel allowed certain testimony to be presented by videotape and waived cross-examination of the witnesses who had been videotaped, the minor expressly waived any objection to that procedure. Furthermore, counsel's actions did not prejudice the minor where the trial court deemed the videotaped testimony unworthy of belief. The court also noted that by agreeing to the videotaped testimony, counsel gained an advantage for the defense by depriving the State of "more persuasive" live testimony.

3. The court rejected the argument that the State failed to prove the minor delinquent beyond a reasonable doubt, finding that the evidence provided a reasonable basis to believe that defendant made a credible admission of sexual misconduct.

(The respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re Rodney S., 402 Ill.App.3d 272, 932 N.E.2d 588 (4th Dist. 2010)

1. The Appellate Court rejected the argument that a *per se* conflict of interest exists when counsel for a minor-respondent acts in the dual capacity of defense attorney and guardian *ad litem*. The court acknowledged that out-of-state case authority and articles cited by respondent supported that argument, but adhered to view that no conflict exists because proceedings under the Juvenile Court Act are not adversarial in nature. The welfare and best interests of the minor are paramount and it is counsel's duty to protect those interests even if they do not correspond to the wishes of the minor.

2. The term of probation for a delinquent minor may not exceed five years or until the minor reaches the age of 21, whichever is less. An exception to that rule is where the minor is found guilty of a forcible felony. 705 ILCS 405/5-715(1). A forcible felony is defined by the Criminal Code in pertinent part as an "aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any other individual." 720 ILCS 5/2-8.

The minor-respondent was found guilty of aggravated battery based on contact of an insulting or provoking nature, and was sentenced to an 11-year term of probation. The Appellate Court concluded that the conviction did not qualify as a forcible felony that would authorize an 11-year probation term. The aggravated battery did not qualify as a forcible felony under the residual clause because that category was intended to refer to felonies not otherwise specified in the statute. The statute had previously included all aggravated batteries without qualification within the definition of forcible felonies, but had been amended to limit the types of aggravated battery that could qualify as a forcible felony. The Appellate Court acknowledged that there was a split among the districts on this issue, with the Third District holding that any aggravated battery qualified as a forcible felony, **People v. Jones**, 226 Ill.App.3d 1054, 590 N.E.2d 101 (3d Dist. 1992), and the First and Second Districts holding that only the limited category of aggravated battery specified by the statute qualified as a forcible felony. **In re Angelique**, 389 Ill.App.3d 430, 907 N.E.2d 59 (2d Dist. 2009); **People v. Schmidt**, 392 Ill.App.3d 689, 924 N.E.2d 998 (1st Dist. 1992). The Fourth District concluded that the decisions of the First and Second Districts were better reasoned.

The court vacated the 11-year probation term as void and remanded for resentencing. (Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[Top](#)

§33-5

Petitions, Adjudicatory Hearings, Adjudications, and Admissions

§33-5(a)

Generally

In re S.B., 2012 IL 112204 (No. 112204, 10/4/12)

1. As a matter of first impression, the Supreme Court held that 725 ILCS 5/104-25(a), which provides an "innocence only" proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the Act does not refer to an

“innocence only” proceeding where a juvenile is unfit. 705 ILCS 405/5-101(3) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

2. The court also concluded that a minor who is found “not not guilty” in a discharge hearing is required to register under the Sex Offender Registration Act. Section 2 of the Act, in its relevant parts, defines a “sex offender” as a person who is charged with a sex offense and “is the subject of a finding not resulting in an acquittal” at a discharge hearing under 725 ILCS 5/104-25(a), or who is adjudicated delinquent based on an act which would constitute one of several criminal offenses if committed by an adult. Because §104-25(a) is incorporated into the Juvenile Court Act, and a person who is found “not not guilty” is not acquitted, registration is required under the plain language of the Registration Act.

3. The court noted, however, that only juveniles who are found delinquent are allowed to petition to terminate their sex offender registration upon showing that the minor poses no risk to the community. (730 ILCS 150/3-5(c),(d)). Because a literal interpretation of the relevant statutes would result in an unfit minor who has been found “not not guilty” being unable to petition to terminate registration, and thus having fewer rights than juveniles who were actually adjudicated delinquent, the court concluded that the legislature could not have intended to exclude juveniles who were found “not not guilty” from seeking termination of the sex offender registration. The court noted that it has authority to read into statutes language omitted by oversight, and elected to correct the legislature’s oversight by allowing juveniles who are found “not not guilty” to seek termination of the sex offender registration requirement under the same conditions as minors adjudicated delinquent for sex offenses.

The court also found that the legislature made a similar oversight with respect to the limitations that are contained in the Sex Offender Community Notification Law (730 ILCS 152/121) related to the dissemination of sex offender registration information with respect to adjudicated delinquents. It held that §121 of that Act should be read to include juveniles found “not not guilty” following a discharge hearing.

In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 (2010)

1. Juvenile delinquency proceedings are comprised of three distinct stages: the findings phase, the adjudicatory phase, and the dispositional phase. The findings phase consists of a trial to determine whether the minor is guilty as charged and should be adjudged delinquent. In a juvenile delinquency case, a finding of guilt and a finding of delinquency are equivalent.

If a finding of delinquency is entered, the matter proceeds to sentencing, which consists of the adjudication and dispositional phases. At the adjudication phase, the trial court determines whether it is in the best interests of the minor and the public to make the minor a ward of the court. At the dispositional phase, the trial court fashions an appropriate sentence to serve the best interests of the minor and the public.

2. The trial court may order a continuance under supervision until such time as the proceeding reaches the adjudicatory stage. An order of continuance under supervision requires that the minor admit the facts supporting the petition and that no objection be raised by the minor, his or her parents, guardian, or legal custodian, the minor’s attorney, or the State’s Attorney. (705 ILCS 405/5-615 (1), (2)).

3. Where the trial court had found the respondent guilty and set the cause for the adjudicatory and dispositional phases, the point at which a continuance of supervision could

be ordered had passed. Thus, although the State objected to supervision when asked by the trial court, supervision could not have been granted even had the State consented.

4. Because a party may raise a constitutional challenge to a statute only if it affects him, the minor respondent lacked standing to argue that the separation of powers doctrine and equal protection are violated by 705 ILCS 405/5-615, which allows the State to block the trial court from granting a continuance under supervision.

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

In re Samantha V., 234 Ill.2d 359, 917 N.E.2d 487 (2009)

1. The court reiterated that the “one-act, one-crime” rule applies in juvenile proceedings.

A charging document which fails to differentiate between separate acts which could arguably provide the basis for separate convictions is viewed as having charged the same conduct under different theories of liability. Because the petition did not differentiate between separate acts of the minor, and at trial the State failed to elicit any testimony or make any argument based on separate conduct, adjudications of delinquency for aggravated battery causing great bodily harm and aggravated battery on a public way were deemed to have been based on the same conduct. Thus, the “one-act, one-crime” doctrine was violated.

2. Where multiple convictions or adjudications are entered in violation of the “one-act, one-crime” doctrine, the respondent should be sentenced only for the most serious offense. Generally, the most serious offense is the one for which the legislature authorized the greater sentence. If the sentences are identical, the more serious offense is the one carrying the more culpable mental state. Where identical punishments are imposed and the same mental state is involved for both offenses, the cause should be remanded for the trial court to determine which offense is more serious.

3. In order to preserve a claim of error for review, a minor must object at trial. However, minors are not required to file post-adjudication motions. (See also **WAIVER – PLAIN ERROR – HARMLESS ERROR**, §§56-1(a), 56-2(b)(6)(a).)

People v. Austin M., 2012 IL 111194 (No. 111194, 8/30/12)

1. In abuse and neglect cases, the trial court is required to appoint a guardian *ad litem*, who serves as an arm of the court. In an abuse and neglect proceeding, the guardian *ad litem* is required to meet with the minor, assess the circumstances, determine what disposition might be in the minor’s best interests, and report back to the court. A guardian *ad litem* represents the best interests of the minor and does not function as the attorney for the ward.

Under 705 ILCS 405/1-5(1), when a guardian *ad litem* in an abuse and neglect proceeding is also an attorney, separate counsel need not be appointed to represent the minor “unless the court finds that the minor’s interests are in conflict with what the guardian *ad litem* determines to be in the best interest of the minor.”

2. There is no requirement that a guardian *ad litem* be appointed in delinquency proceedings; however, a guardian *ad litem* may be appointed if the minor has no interested parent or guardian, if the interests of the parents differ from that of the minor, or if counsel believes that the minor is unable to act in his or her own best interests. (705 ILCS 405/2-17(3)) Just as in abuse and neglect cases, in delinquency proceedings the guardian *ad litem* focuses on the best interests of the minor rather than act as the minor’s attorney.

An alleged delinquent minor is statutorily and constitutionally entitled to representation by a defense attorney, and is not permitted to waive representation and proceed without the assistance of counsel. (705 ILCS 405/5-170(b)) Such representation can

be rendered only by an attorney “whose singular loyalty is to the defense of the juvenile.” Where a single attorney attempts to fulfill the role of guardian *ad litem* as well as defense counsel, “the risk that the minor’s constitutional and statutory right to counsel will be diluted, if not denied altogether, is too great.” Thus, in a delinquency proceeding a single attorney cannot function both as defense counsel and as guardian *ad litem*.

3. A *per se* conflict of interest exists where the minor’s counsel in a delinquency proceeding simultaneously functions as both defense counsel and guardian *ad litem*. A *per se* conflict of interest occurs where certain facts about a defense attorney’s status engender, in and of themselves, a disabling conflict. If a *per se* conflict is established, reversal of the adjudication is required even if it cannot be shown that the conflict affected the attorney’s actual performance.

4. The court concluded that defense counsel suffered from a *per se* conflict of interest, although he was hired by the parents of two minor respondents to act as defense counsel and not appointed as a guardian *ad litem*, where he mistakenly perceived his role as to provide “hybrid” representation encompassing both representation as defense counsel and focusing on the “best interests” of the minors. Defense counsel made several statements indicating his belief that his role was “seeking the truth” and acting in the minors’ best interests. In addition, counsel failed to correct the trial court’s explanation of counsel’s role as a “classic description of a guardian *ad litem*.”

The court also noted that counsel made no effort to suppress the alleged admission of the only minor who was found guilty, even though the trial court found the admission to be the only credible evidence of guilt. Finally, in closing argument counsel failed to emphasize the contradictory evidence concerning whether the statement had been made or to urge the trial court to discount the alleged statement, giving further credence to the notion that he believed his role to be advancing the minor’s best interests rather than to seek an acquittal.

5. Justices Freeman and Karmeier concurred in the result, finding that the State failed to meet its burden of proof in establishing the *corpus delicti* of the crime. *Corpus delicti* cannot be established solely based on the defendant’s statement. Instead, the statement must be corroborated by independent evidence.

The concurring justices concluded that where the trial court specifically found that the only corroborating evidence offered by the State was not credible, the prosecution failed to carry its burden of proof to prove that a crime had occurred. Thus, the delinquency adjudication should be reversed outright.

The delinquency adjudication was reversed and the cause remanded for further proceedings.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re Luis R., 2013 IL App (2d) 120393 (No. 2-12-0393, 6/28/13)

1. 705 ILCS 405/5-120 provides that delinquency proceedings “may be instituted . . . concerning any minor who prior to the minor’s 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance.” The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when the petition was filed.

The court acknowledged that under **In re Luis R.**, 239 Ill.2d 295, 941 N.E.2d 136

(2010), the juvenile court had subject matter jurisdiction, personal jurisdiction, and inherent authority to adjudicate delinquency petitions. The court concluded, however, that the statutory authorization for bringing a delinquency petition does not extend to a person who has reached the age of 21 even if the alleged criminal activity occurred while the person was a minor.

2. The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The State argued that the juvenile court had jurisdiction over the proceedings, and therefore could order a discretionary transfer to criminal court.

The court concluded that the prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." The court also concluded that because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court. "The State's authority for requesting a discretionary transfer from juvenile court to criminal court is derived from the [Juvenile Court Act], and without the authority to institute proceedings in the first place, the State may not obtain a transfer under the Act."

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

People v. Esparza, 2014 IL App (2d) 130149 (No. 2-13-0149, 8/19/14)

705 ILCS 405/5-120 provides that delinquency proceedings may be initiated against any person who, before his or her 17th birthday, violates or attempts to violate a federal or State law or municipal or county ordinance. Subject to several exceptions which did not apply here, a minor who was under the age of 17 at the time of the alleged offense may not be prosecuted as an adult.

The court concluded that escape is a continuing offense which encompasses the entire period between the time the escape occurs and the time the defendant is returned to custody. Thus, a defendant who was 16 when he removed an electronic home monitoring bracelet from his ankle but 17 when he was arrested could be prosecuted either as a juvenile or an adult. Where an offense can be prosecuted in either juvenile or criminal court, the prosecutor has discretion to proceed in either venue. Thus, no error occurred when defendant was prosecuted as an adult.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

People v. Rich, 2011 IL App (2d) 101237 (No. 2-10-1237, 11/3/11)

The State filed a criminal complaint charging defendant, who was 20 years old, with two counts of aggravated criminal sexual assault occurring when defendant was between 12 and 14 years old. Three months later, while defendant was still 20, he was charged by indictment with the same offenses.

When defendant turned 21, the State filed a superseding indictment charging the same offenses. The trial court granted a motion to dismiss the indictment, finding that because defendant was at most 14 when the offenses were committed, he could be prosecuted only under the Juvenile Court Act. Under **In re Luis R.**, 388 Ill.App.3d 730, 924 N.E.2d 990 (2d Dist. 2009), delinquency proceedings may not be commenced against an adult regardless of his or her age at the time of the offense.

The Appellate Court affirmed the dismissal of the indictment.

1. First, under 720 ILCS 5/6-1, a criminal conviction cannot be entered for an offense which occurred when the defendant was under the age of 13. Thus, the trial court properly

dismissed an indictment which alleged that defendant committed aggravated criminal sexual assault when he was 12 years old.

2. Alternatively, the trial court properly dismissed the indictment concerning offenses allegedly committed when the defendant was 13 or 14. The Juvenile Court Act (705 ILCS 405/5-120) governs crimes committed by minors who were under the age of 17 at the time of the offenses. Unless one of four exceptions apply, acts committed by a minor are not subject to criminal prosecution.

The four exceptions include: (1) violations of traffic, boating, or fishing and game laws; (2) offenses subject to automatic transfer provisions which mandate adult prosecution for specified offenses where the minor was at least 15 years old at the time of the offense; (3) where the State successfully moves to transfer the offense to adult criminal court; and (4) where the State successfully moves to extend juvenile court jurisdiction, which permits the imposition of a sentence under the Code of Corrections in addition to a sentence under the Juvenile Court Act, with the adult sentence stayed so long as offender complies with the juvenile sentence.

Because the alleged offenses occurred when the defendant was 13 or 14, the automatic transfer exception did not apply. Although aggravated criminal sexual assault is subject to automatic transfer when the defendant was 15 at the time of the offenses, the court concluded that the General Assembly did not intend to apply the automatic transfer provisions to crimes which were committed by minors under the age of 15, even if the defendant has become an adult by the time the charges are initiated.

3. Furthermore, neither the third nor fourth exceptions applied where the State failed to file timely motions to either transfer the cause to adult court or to extend juvenile jurisdiction. The court stressed that the State would not have been left without a remedy had it acted properly. The State first filed criminal charges some six months before defendant turned 21; had it instituted juvenile proceedings instead, it would have had ample time before defendant turned 21 to seek either transfer to adult court or extended juvenile jurisdiction. Under either scenario, the proceedings could have continued after the defendant reached 21. “[W]hile the State is correct that it was not *required* to file against defendant an initial petition or a motion to transfer or extend jurisdiction under the Act, its failure to do so precludes prosecution after defendant’s twenty-first birthday.”

4. The court declined to decide whether a defendant who has turned 21 can be charged with an automatic transfer offense which was committed when the defendant was 15 or older.

[Top](#)

§33-5(b) Petitions

In re Luis R., 2013 IL App (2d) 120393 (No. 2-12-0393, 6/28/13)

1. 705 ILCS 405/5-120 provides that delinquency proceedings “may be instituted . . . concerning any minor who prior to the minor’s 17 birthday has violated or attempted to violate . . . any federal or State law or municipal or county ordinance.” The Appellate Court concluded that §5-105(3) was intended by the General Assembly to authorize delinquency proceedings only against persons who are under the age of 21 when proceedings are commenced and who before turning 17 violated or attempted to violate a criminal law. Thus, the State lacked authority to institute delinquency proceedings for two counts of aggravated criminal sexual assault which the respondent allegedly committed at age 14 but the respondent was 21 when

the petition was filed.

The court acknowledged that under **In re Luis R.**, 239 Ill.2d 295, 941 N.E.2d 136 (2010), the juvenile court had subject matter jurisdiction, personal jurisdiction, and inherent authority to adjudicate delinquency petitions. The court concluded, however, that the statutory authorization for bringing a delinquency petition does not extend to a person who has reached the age of 21 even if the alleged criminal activity occurred while the person was a minor.

2. The court also rejected the argument that the trial court should have considered the State's motion for discretionary transfer of an individual who had reached the age of 21 before a delinquency petition was filed, but the petition alleged an offense which occurred while the person was a juvenile. The State argued that the juvenile court had jurisdiction over the proceedings, and therefore could order a discretionary transfer to criminal court.

The court concluded that the prosecution's motion for discretionary transfer to criminal court "is a legal nullity if the motion is filed after the respondent reaches the age of 21." The court also concluded that because the State is not authorized to institute delinquency proceedings against a person who has turned age 21, it is not authorized to file a motion requesting discretionary transfer to criminal court. "The State's authority for requesting a discretionary transfer from juvenile court to criminal court is derived from the [Juvenile Court Act], and without the authority to institute proceedings in the first place, the State may not obtain a transfer under the Act."

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

[Top](#)

§33-5(c)

Adjudicatory Hearings and Adjudications

§33-5(c)(1)

Generally

In re Jonathan C.B., ___ Ill.2d ___, ___ N.E.2d ___ (2011) (No. 107750, 6/30/11)

1. Under **People v. Boose**, 66 Ill.2d 261, 362 N.E.2d 303 (1977), shackling of a defendant during trial tends to prejudice the jury against the accused, restrict the ability to assist counsel during trial, and offend the dignity of the judicial process. Therefore, a defendant may be shackled during court proceedings only if there is a manifest need for restraint. **Boose** specified several factors to be considered by the trial court in determining whether shackling is manifestly necessary.

Under **In re Stanley**, 67 Ill.2d 33, 364 N.E.2d 72 (1977), the **Boose** rule is extended to juvenile delinquency proceedings although such proceedings do not occur before a jury. Here, the minor argued that the trial judge has a *sua sponte* duty to inquire whenever a child appears in court in shackles, or in the alternative that plain error occurs where a juvenile is shackled for trial without the benefit of a **Boose** hearing.

The Supreme Court concluded that where the only reference in the record to shackling occurred when the minor was called to testify, at which point the trial court stated "[y]ou may take off the shackles," the record did not support the conclusions that the judge was aware that the minor had been shackled throughout the trial or that the shackles were put back on after the minor testified. Because the alleged error was allowing the minor to remain shackled

without a **Boose** hearing, there was no indication that the judge knew the minor was shackled before he was called to testify, and the trial judge is presumed to know and follow the law unless the record affirmatively indicates otherwise, “we presume that the trial court acted properly and did not commit error with regard to [the minor’s] shackling.”

The court reiterated, however, that “if a trial court *is aware or becomes aware* that a defendant, whether adult or juvenile, is shackled, the trial court must conduct a **Boose** hearing to determine whether there is a manifest need for the restraint.”

In dissenting opinions, Justices Kilbride, Freeman and Burke found that it “strains credulity” (J. Freeman) to believe that the trial judge learned that the minor was shackled only when the minor testified on the third day of trial. Justice Burke also criticized the majority for ignoring the State’s concession that **Boose** error occurred and presuming instead that no error occurred.

2. 705 ILCS 405/5-101(3) authorizes jury trials in delinquency proceedings only if the minor is tried under the extended juvenile jurisdiction provision, as a habitual juvenile offender, or as a violent juvenile offender. Here, a minor charged with delinquency for a sex offense argued that he was constitutionally entitled to a jury trial.

A. The court rejected the argument that because amendments to the Juvenile Court Act have made delinquency proceedings equivalent to criminal prosecutions, a minor is entitled to a jury trial under the Illinois constitution. The court acknowledged that under recent amendments to the Juvenile Court Act, punishment and protection of the public are included within the purposes of juvenile delinquency proceedings. The court found, however, that rehabilitation remains a more important consideration in juvenile proceedings than in the criminal justice system. The court also noted that it has repeatedly found that delinquency proceedings are not the equivalent of criminal prosecutions, and declined to overrule such precedent.

The court also observed that although minors found delinquent based on sex offenses face some of the same collateral consequences as adult offenders, such as the requirement to submit DNA samples and the absence of confidentiality of court records, such collateral consequences do not equate a juvenile delinquency determination and an adult criminal conviction.

B. For similar reasons, the court rejected the argument that because minors accused of sex offenses are subject to more serious sanctions than other delinquent minors, they are entitled to jury trials as a matter of due process and equal protection under the Illinois and federal constitutions. The court acknowledged that minors accused of sex offenses are denied the benefit of confidentiality of court records, but noted that such minors have a diminished expectation of privacy. The court also noted that the lack of confidentiality and collateral consequences such as the requirement to submit DNA samples and ineligibility for expungement are related to rehabilitation because such measures identify persons who are at risk for recidivism.

Furthermore, delinquency adjudications for felony sex offenses carry only indeterminate juvenile sentences, and not more serious adult sentences. Finally, the court reiterated precedent that sex offender registration is a public safety measure rather than a punishment mandating the right to a jury trial, and found that in any event juvenile offender registration is less onerous than adult registration because the information is available to a smaller group of persons and juveniles may petition to terminate the registration requirement.

In rejecting defendant’s argument, the court also noted that accepting the minor’s argument would offend principles of *stare decisis* by overruling long-standing precedent concerning the nature of juvenile delinquency proceedings. The minor “has failed to provide

this court with good cause or compelling reasons to depart from our prior decisions.”

C. The Court rejected the argument that because minors adjudicated delinquent of sex offenses are similarly situated to persons who have the right to a jury trial under extended juvenile jurisdiction and as adult offenders, the absence of the right to a jury trial in sex offense delinquency proceedings violates equal protection. The equal protection clause prohibits disparate treatment of similarly situated individuals. Unless fundamental rights are at issue, equal protection challenges are resolved under the “rational basis” test, which considers whether the challenged classification bears a rational relationship to a legitimate governmental purpose.

The court concluded that minors adjudicated delinquent for sex offenses cannot meet the threshold requirement of showing that they are similarly situated to juveniles subjected to extended juvenile jurisdiction prosecutions or to adult sex offenders. Minors found delinquent under extended juvenile jurisdiction and adult sex offenders face severe deprivations of their liberty, including mandatory incarceration and adult sentences. By contrast, a minor adjudicated delinquent for a sex offense does not face the possibility of an adult criminal sentence, and instead receives a sentence that automatically terminates at age 21.

The court also rejected the argument that equal protection principles are triggered because juvenile sex offenders may face a future loss of liberty under the Sexually Violent Persons Act; commitment under the Act requires a separate, successful action by the State and proof of additional elements that are not common to all sex offenses.

Defendant’s adjudications for criminal sexual assault and attempt robbery were affirmed.

(Defendant was represented by Assistant Defender Catherine Hart, Springfield.)

In re Joshua B., 406 Ill.App.3d 513, 941 N.E.2d 1032 (1st Dist. 2011)

The Appellate Court found no error where the trial court did not advise a minor respondent in a delinquency proceeding that he had a right to testify, or verify that he knowingly and voluntarily waived that right, based on law applicable to adult criminal proceedings. See **WITNESSES**, §57-5.

The Appellate Court rejected the argument that, because juvenile offenders have no right to file post-conviction petitions, they should be provided greater protections than adult criminal defendants. The same concerns regarding interference with the attorney-client relationship that weigh against adoption of a requirement that a trial judge advise a criminal defendant of his right to testify also weigh against such a requirement for a juvenile offender, who is required to be represented by counsel.

The court further directed that if the minor respondent communicates to appellate counsel that his trial counsel did not advise him of his right to testify, appellate counsel should include that assertion in the appellant’s brief even though that claim has no support in the record, noting that the matter is outside of the record and that he is unable to raise the matter before the trial court. This would allow the State to respond to the claim, and provide the Appellate Court with a basis to determine whether to consider the claim.

(Defendant was represented by Assistant Defender Brian Carroll, Chicago.)

[Top](#)

§33-5(c)(2)

Adjudicatory Hearing – Speedy Trial

[Top](#)

§33-5(d)

Admissions

[Top](#)

§33-6

Dispositions (Sentencing)

§33-6(a)

Generally

Graham v. Florida, ___ U.S. ___, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (No. 08-7412, 5/17/10)

The Supreme Court concluded that the “cruel and unusual punishment” clause of the 8th Amendment prohibits a sentence of life imprisonment without the possibility of parole for a juvenile offender who is convicted of an offense other than homicide. The court concluded that there are both national and global consensuses against such sentences even in jurisdictions which authorize life sentences for juveniles, that juveniles are less mature and therefore less culpable for their actions than adults, and that a case-by-case approach would be insufficient to satisfy constitutional concerns.

In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 (2010)

1. Juvenile delinquency proceedings are comprised of three distinct stages: the findings phase, the adjudicatory phase, and the dispositional phase. The findings phase consists of a trial to determine whether the minor is guilty as charged and should be adjudged delinquent. In a juvenile delinquency case, a finding of guilt and a finding of delinquency are equivalent.

If a finding of delinquency is entered, the matter proceeds to sentencing, which consists of the adjudication and dispositional phases. At the adjudication phase, the trial court determines whether it is in the best interests of the minor and the public to make the minor a ward of the court. At the dispositional phase, the trial court fashions an appropriate sentence to serve the best interests of the minor and the public.

2. The trial court may order a continuance under supervision until such time as the proceeding reaches the adjudicatory stage. An order of continuance under supervision requires that the minor admit the facts supporting the petition and that no objection be raised by the minor, his or her parents, guardian, or legal custodian, the minor’s attorney, or the State’s Attorney. (705 ILCS 405/5-615 (1), (2)).

3. Where the trial court had found the respondent guilty and set the cause for the adjudicatory and dispositional phases, the point at which a continuance of supervision could be ordered had passed. Thus, although the State objected to supervision when asked by the

trial court, supervision could not have been granted even had the State consented.

4. Because a party may raise a constitutional challenge to a statute only if it affects him, the minor respondent lacked standing to argue that the separation of powers doctrine and equal protection are violated by 705 ILCS 405/5-615, which allows the State to block the trial court from granting a continuance under supervision.

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

In re Christopher P., 2012 IL App (4th) 100902 (No. 4-10-0902, 9/12/12)

The Juvenile Act expressly addresses sentencing credit for juveniles placed in detention. 705 ILCS 405/5-710(1)(a)(v), 1(b). The broader adult sentencing credit requirements of the Unified Code of Corrections also apply to juveniles. 730 ILCS 5/5-4.5-100(b). A juvenile who is committed to the DOJJ for an indeterminate term is entitled to predisposition credit for any part of a day for which he spent some time in custody. He is also entitled to credit for time spent in custody as a condition of probation where he is resentenced upon revocation of probation. The definition of “custody” for purposes of sentencing credit is the legal duty to submit to legal authority, and not actual physical confinement.

The trial court ordered that respondent complete the county treatment program as a condition of his probation. This program qualifies as time spent in custody under 730 ILCS 5/5-4.5-100(b) for which respondent is entitled to sentencing credit because he had a legal duty to submit to state authority while in the treatment program. The program is housed inside the county detention center and program residents are under the state’s physical control. Important to the Appellate Court’s conclusion were the following facts: (1) respondent was ordered by the court to participate in the program; (2) respondent was held beyond the scheduled 90-day period at the discretion of detention center officials, not the court; (3) respondent was subject to solitary confinement for policy violations; (4) respondent was subject to strip searches upon return from home visits; (5) respondent’s freedom of movement was restricted by locked external and internal doors, including lockdown at night; (6) respondent was subject to the same policies and conditions as detention center residents, who do receive sentencing credit; and (7) respondent was completely integrated with detention center residents for purposes of school, meals, and uniforms.

The fact that treatment center residents received some privileges not accorded to detention center residents did not affect the court’s analysis. Whether or not respondent could be prosecuted for escape if he left the detention center, he would be held responsible for that conduct as the record showed that respondent was held in solitary confinement for other infractions of the rules.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re Darius L., 2012 IL App (4th) 120035 (No. 4-12-0035, 9/12/12)

The Juvenile Act expressly addresses sentencing credit for juveniles placed in detention. 705 ILCS 405/5-710(1)(a)(v), 1(b). The broader adult sentencing credit requirements of the Unified Code of Corrections also apply to juveniles. 730 ILCS 5/5-4.5-100(b). A juvenile who is committed to the DOJJ for an indeterminate term is entitled to predisposition credit for any part of a day for which he spent some time in custody. He is also entitled to credit for time spent in custody as a condition of probation where he is resentenced upon revocation of probation. The definition of “custody” for purposes of sentencing credit is the legal duty to submit to legal authority, and not actual physical confinement.

The trial court ordered that respondent complete the county treatment program as a condition of his probation. This program qualifies as time spent in custody under 730 ILCS

5/5-4.5-100(b) for which respondent is entitled to sentencing credit because he had a legal duty to submit to state authority while in the treatment program. The program is housed inside the county detention center and program residents are under the state's physical control. Important to the Appellate Court's conclusion were the following facts: (1) respondent was ordered by the court to participate in the program; (2) respondent was held beyond the scheduled 90-day period at the discretion of detention center officials, not the court; (3) respondent's freedom of movement was restricted by locked external and internal doors, including lockdown at night; (4) respondent was subject to the same policies and conditions as detention center residents, who do receive sentencing credit; and (5) respondent was completely integrated with detention center residents for purposes of school, meals, and uniforms.

The fact that treatment center residents received some privileges not accorded to detention center residents did not affect the court's analysis. Whether or not respondent could be prosecuted for escape if he left the detention center, he would be held responsible for that conduct because he would be in violation of his probation and subject to a revocation proceeding. While §5-4.5-100(b) allows but does not require sentencing credit for time spent confined for psychiatric or substance abuse treatment, the treatment program did not qualify as psychiatric or substance abuse treatment, but was designed for general "areas of concern."

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re Jabari C., 2011 IL App (4th) 100295 (No. 4-10-0295, 12/2/11)

Juveniles, like adult criminal defendants, are entitled to sentencing credit for each day spent in custody because to deny a juvenile credit could lead to a period of commitment exceeding the maximum time that an adult could serve for the offense.

At issue here is whether a juvenile was entitled to credit for an arrest that did not involve the minor's admission to the juvenile detention center, but two weeks later resulted in a station adjustment. Police officers were dispatched to respondent's school to investigate a report about students smoking cannabis, searched respondent's locker, and subjected him to an interview during which he made an admission. The social investigation report characterized the events of that date as an "arrest."

"Custody" for purposes of adult sentencing credit is defined as the "legal duty to submit" to legal authority, which does not require actual physical confinement. When a person is arrested, he has a "legal duty to submit" to the control of the arresting officer.

Respondent had a legal duty to submit to the control of the officers when he was arrested in the course of their investigation at his school, even though he was not admitted to the juvenile detention center on that date. Therefore, his arrest met the definition of custody, and he was entitled to one day of credit against his sentence for the date of his arrest.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re K.D., 407 Ill.App.3d 395, 943 N.E.2d 210 (1st Dist. 2011)

In a delinquency proceeding, a court may place a minor who is a ward of the court in the "guardianship of the Department of Children and Family Services, but only if the delinquent minor is under 15 years of age or, pursuant to Article II of the [Juvenile Court] Act [pertaining to abused, neglected and dependent minors,] a minor for whom an independent basis of abuse, neglect, or dependency exists. An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency." 705 ILCS 405/5-710(1)(a)(iv).

A social investigation report prepared for consideration at the 16-year-old minor's sentencing hearing indicated that neither of the minor's parents provided for the minor, nor would they be able to do so in the foreseeable future as neither had a stable living environment. Section 5-710(1)(a)(iv) authorized the court to place the minor in the guardianship of DCFS based on that information without the filing of a separate petition to declare the minor an abused, neglected or dependent minor. The reference to Article II in the statute did not impose the procedural requirements of Article II on the court in the delinquency proceeding. Rather, the statute creates an alternative to an Article II proceeding. Due process is satisfied by notice to the parents of the delinquency proceeding and no separate notice need be given of a proceeding under Article II before a DCFS guardianship can be imposed in a delinquency proceeding.

In re M.A., 2014 IL App (1st) 132540 (No. 1-13-2540, 5/28/14)

The subsections of the Illinois Murderer and Violent Offender Against Youth Registration Act, 730 ILCS 154/1 *et seq.*, that make the Act automatically applicable to juveniles are facially unconstitutional since they violate procedural due process and equal protection.

1. The Act applies to juveniles who have been adjudicated delinquent for committing or attempting to commit a variety of violent crimes when the victim is under age 18, including aggravated battery and aggravated domestic battery, the offenses at issue here. The registration period lasts for 10 years. The juvenile must register within five days after entry of the sentencing order and must register as an adult within 10 days of turning 17 years old. There is no provision for a juvenile to be taken off the registry.

The Act requires the police to send the registration information to the offender's school district, and to all child care facilities, colleges and libraries in the county. The Act allows the police to disclose the offender's information to "any person likely to encounter a violent offender." Once the juvenile turns 17 and registers as an adult, the registration information is accessible to the public through a statewide database.

The 10-year period is automatically extended for another 10 years when an offender violates any registration requirement. Failure to register is a Class 3 felony and each subsequent violation is a Class 2 felony.

2. Procedural due process claims challenge the procedures used to deny a person life, liberty, or property. The primary components of due process are notice and an opportunity to be heard. In assessing procedural due process claims, courts consider the following factors: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of such interest; (3) the probable value of additional or substitute procedures; and (4) the State's interest, including the fiscal and administrative burdens of new or additional procedures.

Since the Act affects liberty and privacy interests, but does not entirely deprive a juvenile of those rights, it does not impair any fundamental constitutional rights. Thus, its provisions are analyzed under the rational basis test.

The mandatory requirement that juveniles who commit certain offenses must register as adults under the Act violates procedural due process. The Act automatically requires juvenile offenders to register as adults, with its attendant statewide publication of registration information, without any individualized assessment of their continuing risk to society.

While the initial registration following conviction might not violate due process under the rational basis test, the requirement that juveniles register as adults without any further process does. This is especially true given the transitory nature of youth and the absence of any significant administrative burdens that would be imposed in requiring a hearing to

determine whether juveniles remain a danger to society at the time of adult registration.

3. An equal protection challenge asks whether a statute treats similarly situated individuals in a similar manner. Equal protection does not prohibit the legislature from drawing proper distinctions among different categories of people. Unless fundamental rights are at issue, the classification does not violate equal protection if it bears a rational relationship to the purpose of the statute.

The registration provisions for juvenile violent offenders against youth violate equal protection when compared to the registration procedures for juvenile sex offenders. The two groups are similarly situated because, although they were convicted of different offenses, they both belong to the same class of juvenile offenders who are required to register with the police.

The disparate treatment of the two groups does not bear a rational relationship to the purposes of the Act. The goal of registering both groups is the same: protection of the public. Juvenile sex offenders, however, do not have to register as adults and may petition to be taken off the registry after five years. The same legislative purposes would be served by providing these features to juvenile violent offenders against youth. The failure to do so results in disparate treatment for violent offenders and thus violates equal protection.

4. Although the Act violates procedural due process and equal protection, it does not violate substantive due process. A statute violates substantive due process if it impermissibly restricts a person's life, liberty, or property interests. In the absence of a fundamental right, the statute need only show a rational relationship to the legislative purpose behind its enactment.

In **In re J.W.**, 204 Ill.2d 50 (2003), the Illinois Supreme Court rejected a substantive due process challenge to the registration provisions for juvenile sex offenders, finding a rational relationship between registering juvenile sex offenders and the need to protect the public. The result in **In re J.W.** controls this case. There is a rational relationship between registering juvenile violent offenders against youth and protecting the public. The Act thus does not violate substantive due process.

5. The dissent agreed that the Act did not violate substantive due process, but disagreed with the majority's conclusion that it violated procedural due process and equal protection. The dissent argued that the registration requirements are a collateral consequence of an adjudication of delinquency and juveniles receive due process during their adjudicatory hearings. There is thus no procedural due process violation.

Moreover, juvenile violent offenders against youth are not comparable to juvenile sex offenders, so disparate treatment does not violate equal protection. In providing early termination to sex offenders, the legislature recognized that many sex offenses by juveniles were the result of sexually immature rather than predatory conduct. The legislature has not recognized any similar concern with violent behavior by juveniles. Accordingly, there is a rational basis to treat the two groups differently.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

In re Raheem M., 2013 IL App (4th) 130585 (No. 4-13-0585, 12/10/13)

1. A court may commit a delinquent minor to the Department of Juvenile Justice, if it finds that "commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." 705 ILCS 405/5-750(1)(b).

The trial court did not comply with this requirement prior to committing respondent to the DOJJ. The court had no evidence before it of efforts made to locate less restrictive

alternatives and did not state the reasons why such efforts were unsuccessful. Merely reciting such findings in a form order is insufficient to comply with the statute. “Actual efforts must be made, evidence of those efforts must be presented to the court, and, if those efforts prove unsuccessful, an explanation must be given why the efforts were unsuccessful.” References in the social history report to available community resources if the respondent were sentenced to probation did not suffice where those resources were never even contacted with regard to respondent.

2. Sentencing errors can be reviewed for plain error where the evidence was closely balanced or the error was sufficiently grave that the defendant was deprived of a fair sentencing hearing. Because the requirements of 705 ILCS 405/5-750(1)(b) ensure that trial courts treat DOJJ sentences as a last resort, failure to comply with those requirements is such a serious error that the appellate court may excuse forfeiture based on the second prong of plain-error analysis. The appellate court was mindful that respondent had no other means of relief from this error given the state of the law regarding whether juveniles are entitled to seek relief under the Post-Conviction Hearing Act.

3. The appellate court was also troubled by the trial court’s *sua sponte* decision to detain respondent after trial and prior to sentencing. The court made this decision without much information regarding respondent other than that he had been expelled from school as a result of the case before it. This was respondent’s first case in juvenile court. He lived with his mother and stepfather, with whom he had a good relationship. He was convicted of aggravated battery of a teacher based on evidence that he threw a chair at a student during a brawl involving several students in the school cafeteria. The chair made incidental contact with a teacher and no serious injuries resulted. As a consequence of the court’s decision to detain, respondent missed his scheduled GED examination.

4. A trial court may not consider a factor inherent in the charged offense in aggravation at sentencing.

Respondent committed what normally would be classified as a simple battery but which became an aggravated battery due to the victim’s status and the location of the incident. The trial judge improperly allowed these same factors to impact its sentencing judgment as aggravating factors.

5. The appellate court also criticized the emphasis that the trial court placed on the criminal history of respondent’s biological father, which was exhaustively covered in the social history investigative report. Respondent should not be punished for the crimes of his father. These crimes had no relevance especially because respondent had no contact with his father, who was incarcerated out of state.

The appellate court vacated respondent’s commitment to the DOJJ and remanded for a hearing in compliance with 705 ILCS 405/5-750(1)(b).

Steigmann, J., dissented. While the sentencing hearing was “lacking,” based on his “understanding of this record,” he disagreed that application of the plain-error doctrine was appropriate.

(Defendant was represented by Supervisor Arden Lang, Springfield.)

In re Shermaine S., 2015 IL App (1st) 142421 (No. 1-14-2421, 1/9/15)

Under the habitual juvenile offender statute, a minor who is adjudicated delinquent for certain serious felonies, such as first degree murder, criminal sexual assault, or robbery, and has two prior felony adjudications, is adjudged an habitual juvenile offender and must be committed to Department of Juvenile justice until his 21st birthday. 705 ILCS 405/5-815.

Defendant argued that the statute violated the Eighth Amendment because it precludes

the court from considering individualized factors about the minor, including his youth and attendant circumstances, as required by **Miller v. Alabama**, 132 S.Ct. 2455 (2012). He also argued that it violated the proportionate penalties clause of the Illinois Constitution which requires a court to consider rehabilitation in imposing sentence.

The Appellate Court rejected both arguments. The court first noted that the Illinois Supreme Court has held that the Eighth Amendment and the proportionate penalties clause do not apply to juvenile proceedings since they only apply to the criminal process and juvenile proceedings are not criminal in nature. **In re Rodney H.**, 223 Ill. 2d 510 (2006). But even if they did apply, the statute would not violate either constitutional provision.

In **People ex rel. Carey v. Chrastka**, 83 Ill. 2d 67 (1980), the Illinois Supreme Court held that sentencing a habitual juvenile offender until the age of 21 did not violate the Eighth Amendment. **Miller** does not change this result because unlike this case, **Miller** involved juveniles who were tried as adults. Moreover, **Miller** did not prohibit all mandatory penalties, but only mandatory life sentences.

The statute also does not violate the proportionate penalties clause. Although the Illinois Supreme Court stated in **People v. Clemons**, 2012 IL 107821, that the language of the clause requiring all penalties to have “the objective of restoring the offender to useful citizenship,” indicated that it goes beyond the Eighth Amendment, elsewhere, both before and after **Clemons**, the court has held that the clause is co-extensive with the Eighth Amendment. **In re Rodney H.**; **People v. Patterson**, 2014 IL 115102. Since the court held in **Chrastka** that the statute did not violate the Eighth Amendment, it similarly cannot violate the co-extensive proportionate penalties clause.

(Defendant was represented by Assistant Defender Jonathan Krieger, Chicago.)

People v. Baker, 2015 IL App (5th) 110492 (No. 5-11-0492, 2/6/15)

The court accepted the State’s concession that under **Miller v. Alabama**, 567 U.S. ___, 132 S.Ct. 2455, ___ L.Ed.2d ___ (2012), the Eighth Amendment was violated by the imposition of mandatory natural life sentences for offenses which defendant committed when he was 15 years old. In remanding for resentencing, the court noted that **Miller** does not foreclose the possibility of life without parole for a juvenile who is convicted of murder provided that the sentencing court has discretion to impose a different penalty and takes into consideration the offender's youth and personal characteristics before imposing sentence.

(Defendant was represented by Assistant Deputy Defender Amanda Horner, Mt. Vernon.)

People v. Chambers, 2013 IL App (1st) 100575 (No. 1-10-0575, 8/13/13)

The court rejected defendant’s argument that on appeal from denial of post-conviction relief, he could argue for the first time that a mandatory life sentence for a person who was a minor at the time of the offense violates **Miller v. Alabama**, ___ U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). In **Miller**, the Supreme Court held that the Eighth Amendment is violated by mandatory life sentences without parole for persons who were under the age of 18 at the time of their crimes. **Miller** did not prohibit sentencing juveniles to life imprisonment without parole, but held that the mandatory imposition of such a sentence violates the Constitution.

The court noted that under **People v. Williams**, 2012 IL App (1st) 111145, a sentence which violates **Miller** is not void *ab initio*. In addition, because defendant’s petition did not satisfy the cause and prejudice test for successive post-conviction petitions, the court could have considered the issue only if the mandatory life sentence was void.

The court also noted that a sentence is void only if the court which rendered it lacked jurisdiction to do so. Unless a statute is unconstitutional on its face, the fact that the sentence which it authorizes is applied improperly does not mean that the trial court lacked jurisdiction. In reaching its holding, the court rejected the reasoning of **People v. Luciano**, 2013 IL App (2d) 110792, which held that a sentence which violates **Miller** is void.

(Defendant was represented by Assistant Defender Manuel Serritos, Chicago.)

People v. Dupree, 2014 IL App (1st) 111872 (No. 1-11-1872, 7/30/14)

The court expressed its concern that “serious constitutional issues” are presented where the convergence of mandatory minimum and mandatory consecutive sentences result in *de facto* life sentences for juveniles who were under the age of 18 at the time of the offense but who are tried as adults. Because the convictions were reversed for other reasons, however, the court did not reach this issue.

In a concurring opinion, Justice Pucinski found that the imposition of a mandatory *de facto* life sentence on a juvenile offender who was prosecuted as an adult creates constitutional issues under **Miller v. Alabama**, 567 U.S. ___, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012), which held that the Eighth Amendment is violated by the mandatory imposition of a life sentence without the possibility of parole on offenders who were under the age of 18 at the time of the offense.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

People v. Johnson, 2013 IL App (1st) 120413 (No. 1-12-0413, 8/7/13)

1. 730 ILCS 5/5-5-3.2(b)(1) authorizes an extended term for a defendant who is convicted of any felony after having been previously convicted of the “same or similar class felony or greater class felony” within the past 10 years, excluding time in custody. 730 ILCS 5/5-5-3.2(b)(7) authorizes an extended term for a person who is at least 17, commits “a felony,” and within the past 10 years (excluding time in custody) was “adjudicated a delinquent minor . . . for an act which would be a Class X or Class 1 felony if committed by an adult.” Thus, under the plain language of the statute, an adult who commits any felony within 10 years of having been adjudicated delinquent for a Class X or Class 1 felony is subject to an extended term, while an adult repeat offender is subject to an extended term only if the second conviction is for “the same or greater class offense” as the original conviction.

Although the State conceded that the statute was unconstitutional on its face when applied to the defendant, who was convicted of armed robbery while armed with a firearm after having been adjudicated delinquent for residential burglary, the court elected to reject the concession and find that the legislature’s failure to include the phrase “same or greater class felony” in section (b)(7) was inadvertent. The court concluded that the legislative intent underlying both sections (b)(1) and (b)(7) was to impose harsher sentences on offenders whose repeat offenses show that they are resistant to correction. The court found that the legislature could not have intended to authorize an extended term for a repeat offender who is convicted of any felony after having been adjudicated delinquent, but exclude extended term sentences for adult repeat offenders unless the prior conviction was for the same or greater class felony. Thus, the court concluded that the phrase “same or greater class felony” should be read into section (b)(7).

Because defendant’s delinquency adjudication for residential burglary was not for the same or greater class felony as armed robbery while armed with a firearm, defendant was not eligible for an extended term under section (b)(7).

2. The court remanded the cause for resentencing, rejecting the State’s request to

merely impose a reduced sentence. While a reviewing court has the power to reduce a sentence imposed by the trial court, this power should be exercised sparingly and with caution. Because the trial court rejected the State's request for the maximum extended term sentence for which it believed defendant was eligible, the court found that the trial judge might have imposed less than the 30-year maximum non-extended term which actually applied to the offense.

(Defendant was represented by Assistant Defender Benjamin Wimmer, Chicago.)

[Top](#)

§33-6(b)

Commitment to the Department of Corrections (DOC), Juvenile Division

In re Shelby R., 2013 IL 114994 (No. 114994, 9/19/13)

Under 705 ILCS 405/5-710(1)(b), a minor may be committed to the Department of Juvenile Justice only if a term of incarceration is permitted by law for adults who are found guilty of the offense for which the minor was adjudicated delinquent. In addition, 705 ILCS 405/5-710(7) limits the term of commitment for a minor to the maximum sentence which an adult could receive for the same act. The court concluded that because an adult cannot be convicted of the offense of unlawful consumption of alcohol by a minor, and therefore cannot be incarcerated for that offense, a minor who is placed on probation for unlawful consumption of alcohol by a minor cannot be committed to the Department of Juvenile Justice upon revocation of her probation.

The court rejected the argument that other provisions of the Juvenile Court Act permit incarceration of minors upon revocation of probation, finding that such provisions concern the pre-adjudication incarceration of minors who are accused of violating court orders. In addition, even if a juvenile could be incarcerated for violating a court order, the record showed that the minor was incarcerated not for violating the probation order, but on the offense for which probation had been imposed - unlawful consumption of alcohol by a minor.

Because the trial court lacked authority to commit the respondent to the Department of Juvenile Justice upon revocation of her probation for unlawful consumption of alcohol, the order committing the minor to the Department of Juvenile Justice was reversed.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re Henry P., 2014 IL App (1st) 130241 (No. 1-13-0241, 5/30/14)

Effective January 1, 2012, the Juvenile Court Act was amended to specifically require that before committing a juvenile to the Department of Juvenile Justice (DJJ), the court must find that such commitment "is the least restrictive alternative," that efforts were made to find less restrictive alternatives, and the reasons why such efforts were unsuccessful. 705 ILCS 405/5-750(1)(b).

Here, the trial court failed to comply with the act. It never made a finding or expressly stated that committing defendant to the DJJ was the least-restrictive. And it failed to check the box on the commitment order indicating that the DJJ was the least-restrictive alternative.

Compliance with the act requires an express finding. It is not satisfied by showing that the appellate record demonstrates that the trial court considered less-restrictive alternatives. Since there was no express finding in this case, the court failed to comply with the statute even if the record did show that the court considered less-restrictive alternatives.

The cause was remanded for resentencing.
(Defendant was represented by Assistant Defender Megan Ledbetter, Chicago.)

In re Raheem M., 2013 IL App (4th) 130585 (No. 4-13-0585, 12/10/13)

1. A court may commit a delinquent minor to the Department of Juvenile Justice, if it finds that “commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement.” 705 ILCS 405/5-750(1)(b).

The trial court did not comply with this requirement prior to committing respondent to the DOJJ. The court had no evidence before it of efforts made to locate less restrictive alternatives and did not state the reasons why such efforts were unsuccessful. Merely reciting such findings in a form order is insufficient to comply with the statute. “Actual efforts must be made, evidence of those efforts must be presented to the court, and, if those efforts prove unsuccessful, an explanation must be given why the efforts were unsuccessful.” References in the social history report to available community resources if the respondent were sentenced to probation did not suffice where those resources were never even contacted with regard to respondent.

2. Sentencing errors can be reviewed for plain error where the evidence was closely balanced or the error was sufficiently grave that the defendant was deprived of a fair sentencing hearing. Because the requirements of 705 ILCS 405/5-750(1)(b) ensure that trial courts treat DOJJ sentences as a last resort, failure to comply with those requirements is such a serious error that the appellate court may excuse forfeiture based on the second prong of plain-error analysis. The appellate court was mindful that respondent had no other means of relief from this error given the state of the law regarding whether juveniles are entitled to seek relief under the Post-Conviction Hearing Act.

3. The appellate court was also troubled by the trial court’s *sua sponte* decision to detain respondent after trial and prior to sentencing. The court made this decision without much information regarding respondent other than that he had been expelled from school as a result of the case before it. This was respondent’s first case in juvenile court. He lived with his mother and stepfather, with whom he had a good relationship. He was convicted of aggravated battery of a teacher based on evidence that he threw a chair at a student during a brawl involving several students in the school cafeteria. The chair made incidental contact with a teacher and no serious injuries resulted. As a consequence of the court’s decision to detain, respondent missed his scheduled GED examination.

4. A trial court may not consider a factor inherent in the charged offense in aggravation at sentencing.

Respondent committed what normally would be classified as a simple battery but which became an aggravated battery due to the victim’s status and the location of the incident. The trial judge improperly allowed these same factors to impact its sentencing judgment as aggravating factors.

5. The appellate court also criticized the emphasis that the trial court placed on the criminal history of respondent’s biological father, which was exhaustively covered in the social history investigative report. Respondent should not be punished for the crimes of his father. These crimes had no relevance especially because respondent had no contact with his father, who was incarcerated out of state.

The appellate court vacated respondent’s commitment to the DOJJ and remanded for a hearing in compliance with 705 ILCS 405/5-750(1)(b).

Steigmann, J., dissented. While the sentencing hearing was “lacking,” based on his “understanding of this record,” he disagreed that application of the plain-error doctrine was appropriate.
(Defendant was represented by Supervisor Arden Lang, Springfield.)

In re Shelby R., 2012 IL App (4th) 110191 (No. 4-11-0191, 8/22/12)

Under the Juvenile Court Act, a minor may be committed to the Department of Juvenile Justice “only if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent.” 705 ILCS 405/5-710(1)(b).

Consumption of alcohol by any person under 21 years of age is a Class A misdemeanor

punishable by imprisonment up to a year. 235 ILCS 5/6-20. Unlawful consumption of alcohol by a minor falls under the exclusive jurisdiction of Article V of the Juvenile Act. The Act defines an “adult” as a “person 21 years of age or older” and a “minor” as a “person under the age of 21 years subject to this Act.” 705 ILCS 405/1-3(2) and (10). Because it is legally impossible for an adult as defined by the Act to commit the offense of unlawful consumption of alcohol and to be incarcerated for that offense, a minor cannot be committed to the Department of Juvenile Justice for unlawful consumption of alcohol. That an 18-year-old could be subject to imprisonment for unlawful consumption does not affect this analysis as §5-710 is construed using the definitions contained in the Act. The Appellate Court refused to read different words or definitions into the statute.

(Respondent was represented by Assistant Defender Jacqueline Bullard, Springfield.)

[Top](#)

§33-6(c)

Habitual Juvenile Offender

In re A.P., 2014 IL App (1st) 140327 (No. 1-14-0327, 6/27/14)

The habitual offender provision of the Juvenile Court Act (705 ILCS 405/5-815) requires that a minor who has twice been adjudicated delinquent for offenses which would have been felonies if committed by an adult and who is thereafter adjudicated delinquent for one of several specified offenses must be committed to the Department of Juvenile Justice until his 21st birthday, without the possibility of parole, furlough, or non-emergency authorized absence. The court concluded that the habitual offender provision does not violate the Eighth Amendment or the proportionate penalties clause of the Illinois Constitution although it removes all discretion from the trial court in sentencing minors who are adjudicated habitual juvenile offenders.

The Illinois Supreme Court has held that the Eighth Amendment and proportionate penalties clause apply only to the criminal process and therefore do not apply to juvenile proceedings. Here, the court concluded that even if the Eighth Amendment or the proportionate penalties clause applied, the habitual offender act is constitutional.

The court noted that in **Miller v. Alabama**, 567 U.S. ___, 132 S.Ct. 2455, 183 N.E.2d 407 (2012), the United States Supreme Court held that the Eighth Amendment is violated where a mandatory life sentence without the possibility of parole is imposed on a person who was under the age of 18 at the time of the crime. The Appellate Court distinguished **Miller**, however, because it involved minors who were charged and convicted as adults. Furthermore, **Miller** holds only that the Eighth Amendment prohibits mandatory natural life sentences without the possibility of parole, and not that all mandatory sentences are unconstitutional when applied to juveniles.

Because neither the Eighth Amendment nor the proportionate penalties clause is violated by the habitual juvenile offender provision, the minor’s adjudication as a delinquent minor and habitual juvenile offender was affirmed.

(The minor was represented by Assistant Defender Heidi Lambros, Chicago.)

[Top](#)

§33-6(d)

Sentencing Where Juvenile Has Been Transferred to Adult Court for Prosecution

Miller v. Alabama, 567 U.S. ___, ___ S. Ct. ___, ___ L.Ed.2d ___, 2012 WL 2368659 (No. 10-9646, 6/25/12)

1. The Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. This flows from the precept that criminal punishment should be graduated and proportioned to both the offender and the offense.

Two strands of precedent reflect the court's concern with proportionate punishment. The first adopted categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty. This line of cases includes **Roper v. Simmons**, 543 U.S. 551 (2005) (invalidating the death penalty for juvenile offenders), and **Graham v. Florida**, 560 U.S. ___, 130 S. Ct. 2011, ___ L.Ed.2d ___ (2010) (invalidating life without parole for non-homicide juvenile offenders). The second line of precedent prohibits mandatory imposition of capital punishment and requires that the sentencer consider the characteristics of the offender and the details of the offense before sentencing him to death.

2. The confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for offenders under 18 violate the Eighth Amendment.

Roper and **Graham** establish that children are constitutionally different than adults for the sentencing purposes as they have diminished culpability and greater prospects for reform. Mandatory life-without-parole statutes prohibit assessment of whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. They contravene **Roper** and **Graham's** foundational principle that imposition of life without parole on juveniles cannot proceed as though they were not children.

Graham's treatment of juvenile life sentences as analogous to capital punishment makes relevant the second line of cases demanding individualized sentencing when imposing the death penalty. A sentencer must have the ability to consider the mitigating qualities of youth. Mandatory penalties by their nature preclude consideration of an offender's age and the wealth of characteristics and circumstances attendant to it, by treating every child like an adult. By making youth and all that accompanies it irrelevant to imposition of the harshest prison sentence, mandatory penalties pose too great a risk of disproportionate punishment.

3. This holding does not effectively overrule **Harmelin v. Michigan**, 501 U.S. 957 (1991), which upheld mandatory life without parole for adult offenders. Sentencing rules permissible for adults may not be so for children. Just as death is different, children are different too.

The fact that 29 jurisdictions have some form of mandatory life imprisonment for juvenile offenders does not defeat an Eighth Amendment challenge. The absence of a national consensus is relevant when the court considers a categorical bar to a form of punishment, not where, as here, it only requires that the sentencer follow a certain process. Moreover, fewer states allow mandatory life for homicide offenders than allowed mandatory life for non-homicide offenders in **Graham**. And, as in **Graham**, the fact that juvenile transfer statutes were enacted independently of mandatory life statutes makes it impossible to conclude that legislators actually endorsed the penalty of mandatory life without parole for children.

4. The presence of some discretion in some jurisdictions' transfer statutes is insufficient to eliminate the Eighth Amendment violation. The question at transfer hearings and the

resources available may differ dramatically from the issue at post-trial sentencing. The ruling may reflect only a choice between light sentencing as a juvenile and standard sentencing as an adult. The discretion available to a judge at the transfer stage therefore cannot substitute for discretion at post-trial sentencing in adult court.

Breyer, J., joined by Sotomayor, J., concurred. Sentencing a juvenile to natural life without a finding that the juvenile killed or intended to kill the victim, violates the Eighth Amendment, whether its application is mandatory or discretionary.

People v. Davis, 2014 IL 115595 (No. 115595, 3/20/14)

1. The Eighth Amendment to the United States Constitution prohibits the imposition of cruel and unusual punishments. This prohibition flows from the basic principle that criminal punishment should be graduated and proportioned to the offender and the offense. In applying the Eighth Amendment to juveniles, the United States Supreme Court has recognized three general ways that juveniles differ from adults: (1) they lack maturity and have an underdeveloped sense of responsibility; (2) they are more vulnerable to negative influences and outside pressure; and (3) their character is not as well formed. **Roper v. Simmons**, 543 U.S. 551 (2005); **Graham v. Florida**, 560 U.S. 48 (2010); **Miller v. Alabama**, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012).

In **Miller**, the Supreme Court held that because juveniles “are constitutionally different from adults for purposes of sentencing,” it is impermissible to impose a mandatory sentence of natural life imprisonment on juveniles under 18. A mandatory sentence precludes consideration of mitigating circumstances such as: the juvenile’s age; his family and home environment; the circumstances of the offense, including the extent of his participation; his ability to interact with police, prosecutors, and to assist in his defense; the effect of family or peer pressure; and the possibility of rehabilitation.

For these reasons, a sentencing court must have the opportunity to consider mitigating circumstances before imposing a sentence of natural life imprisonment on a juvenile. The Supreme Court refused to declare categorically that a juvenile can never receive natural life imprisonment, but believed such sentences will be uncommon.

2. Defendant argued that under **Miller** the statutory scheme mandating natural life imprisonment in this case was facially unconstitutional. If a new constitutional rule renders a statute facially unconstitutional, the statute is void ab initio, meaning that the statute was constitutionally infirm and unenforceable from the moment it was enacted. Any sentence imposed under an unconstitutional statute is void and may be attacked at any time. A facial challenge is the hardest to mount since a statute is facially unconstitutional only if there are no set of circumstances in which the statute could be validly applied.

Defendant was sentenced pursuant to section 5-8-1(a)(1)(c) of the Unified Code of Corrections which provides that if a defendant is convicted of murdering more than one individual, the court shall sentence him to natural life imprisonment. Defendant argued that this provision is facially unconstitutional because it never permits a sentencer to consider any of the mitigating factors required by **Miller**.

The Illinois Supreme Court rejected this argument since **Miller** was expressly limited to mandatory life sentences imposed on juveniles. Section 5-8-1(a)(1)(c) by contrast can be validly applied to adults and thus it is not unconstitutional in all of its applications. Additionally, the transfer statute in effect when defendant was tried provided for a permissive transfer that specifically required the court to consider all relevant circumstances attendant to defendant’s age, as required by **Miller**, before transferring the juvenile to adult court. Ill. Rev. Stat. 1989, ch. 37, ¶805-4. Under these circumstances, the sentencing scheme, including

the transfer statute, was not facially unconstitutional.

3. The Illinois Supreme Court, however, held that **Miller** applies retroactively to cases on collateral review. In **Teague v. Lane**, 489 U.S. 288 (1989) (adopted in Illinois in **Flowers**, 138 Ill. 2d 218 (1990)), the Supreme Court held that new constitutional rules generally do not apply retroactively to cases on collateral review. But substantive rules that narrow the scope of a criminal statute or that place particular conduct or persons beyond the State's power to punish are not subject to **Teague's** bar. **Schirro v. Summerlin**, 542 U.S. 348 (2004).

While **Miller** does not forbid a sentence of life imprisonment, it does require that every minor receive a sentencing hearing where a sentence other than life imprisonment is an available outcome. **Miller** thus places a particular class of persons (juveniles) beyond the State's power to punish with a particular punishment (mandatory life imprisonment). **Miller** thus declared a new substantive rule not subject to **Teague's** retroactivity bar.

4. Defendant established cause and prejudice allowing him to raise this issue for the first time in a successive post-conviction petition. **Miller's** new substantive rule, which was decided after defendant filed his prior post-conviction petition, constitutes cause because it was not available earlier to counsel. It constitutes prejudice because it applies retroactively to defendant's sentencing hearing, rendering his mandatory life sentence unconstitutional. The court vacated defendant's mandatory life sentence and remanded for a new sentencing hearing. The trial court may still sentence defendant to life imprisonment so long as the sentence is discretionary rather than mandatory.

5. Defendant's natural life sentence did not violate the proportionate penalties clause or the due process clause of the Illinois Constitution. Ill. Const., art. I, §§2,11. These arguments were raised and rejected previously, **Davis**, No. 1-93-1821 (1995) (unpublished order under Supreme Court Rule 23); **Davis**, 388 Ill. App.3d 869 (2009), and hence are res judicata and cannot be relitigated.

6. In **Graham v. Florida**, 560 U.S. 48 (2010), the United States Supreme Court held that life imprisonment may not be imposed on a juvenile who did not commit homicide. Defendant argued that his sentence was unconstitutional under **Graham** because he did not kill or intend to kill. The Illinois Supreme Court rejected this argument, holding that **Graham** by its own terms does not apply to this case because defendant was convicted of murdering two victims.

People v. King, 241 Ill.2d 374, 948 N.E.2d 1035 (2011)

705 ILCS 405/5-130(1)(a) provides that juvenile delinquency proceedings do not apply where a minor is at least 15 at the time of the offense and is charged with certain specified offenses, including: (1) first degree murder, (2) aggravated criminal sexual assault; (3) aggravated battery with a firearm committed in a school, on the real property comprising a school, within 1,000 feet of the real property comprising a school, at a school related activity, or on, boarding, or departing from any conveyance owned, leased, or contracted by a school or school district to transport students to or from school or a school related activity regardless of the time of day or time of year that the offense was committed; (4) armed robbery when the armed robbery was committed with a firearm, and (5) aggravated vehicular hijacking when the hijacking was committed with a firearm. The above charges, along with "all other charges arising out of the same incident," are to be prosecuted in the criminal courts.

Where none of the above offenses are charged, prosecution must be in the juvenile court unless the minor files a written waiver of juvenile proceedings. (705 ILCS 5/130(1)(b)(i)).

If a minor prosecuted in adult court is convicted only of an offense which is "not covered by" subsection (1)(a), adult sentencing is available only if within 10 days of the verdict or entry

of judgment, the State requests a hearing concerning adult sentencing. (705 ILCS 5/130(1)(c)(ii)). The trial court must conduct a hearing to determine whether such a request should be granted.

The court concluded that § 5-130(1)(a) “covers” not only the specified offenses which mandate adult prosecution, but all charges arising from the same incident. Thus, where the defendant was tried in adult court on charges of first degree murder and attempt first degree murder which arose from a single incident, and pleaded guilty to attempt first degree murder in return for dismissal of the first degree murder counts, he stood convicted of an offense “covered by” § 5-130(1)(a). Thus, adult sentencing was available for attempt murder despite the State’s failure to file a motion requesting such sentencing within 10 days following the guilty plea.

The trial court’s imposition of an adult sentence for attempt first degree murder was affirmed.

(Defendant was represented by Assistant Defender Mike Vonnahmen, Springfield.)

People v. King, 395 Ill.App.3d 985, 919 N.E.2d 958 (4th Dist. 2009)

1. A minor who is tried as an adult for both first degree murder and an offense which is not required to be prosecuted in adult court, and who is convicted only of the offense for which is adult prosecution is not required, is to be sentenced as a juvenile unless, within 10 days of the conviction, the State requests a hearing at which the court considers specified statutory factors to determine whether adult sentencing is appropriate. The State’s failure to make a timely request requires that all further proceedings be conducted under the Juvenile Court Act. An adult sentence imposed in the absence of a timely request by the State is void, and may be challenged for the first time on appeal from denial of a post-conviction petition.

2. The court rejected the State’s argument that defendant could not challenge the validity of his adult sentence while preserving the benefit of having entered a negotiated plea which included that sentence in return for dismissing another charge. Because 705 ILCS 405/5-130(1)(c)(ii) requires the State to request adult sentencing hearing “after trial or plea,” the State must make a timely request for adult sentencing even if the minor explicitly agrees to an adult sentence in a negotiated plea.

Because the defendant had attained 21 years of age and could no longer be committed as a juvenile, the trial court was directed to vacate the criminal conviction, enter an adjudication of delinquency, and impose a sentence of “time served” as of defendant’s 21st birthday.

(Defendant was represented by Assistant Defender Mike Vonnahmen, Springfield.)

People v. Pacheco, 2013 IL App (4th) 110409 (No. 4-11-0409, 6/24/13)

1. In **Roper v. Simmons**, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment bars capital punishment for juvenile offenders. In **Graham v. Florida**, 560 U.S. 48 (2010), the court held that a life sentence without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. In **Miller v. Alabama**, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the court concluded that the Eighth Amendment prohibits a sentencing scheme which mandates a life sentence without the possibility of parole for juvenile offenders, even those convicted of homicide.

The court concluded that under the reasoning of **Roper**, **Graham** and **Miller**, neither the Eighth Amendment nor the proportionate penalties clause of the Illinois Constitution are violated by the Illinois statute mandating the transfer of juveniles who are at least 15 and who are charged with first degree murder (705 ILCS 405/5-130(1)(a)(i)), the automatic imposition

of an adult sentence on a juvenile who is subject to the automatic transfer statute, or the application of truth-in-sentencing provisions to minors who are convicted of murder by accountability. The court concluded that the Supreme Court cases concerned only two sentences, death and life without the possibility of parole. The decisions do not require that legislatures and courts treat youths and adults differently in every respect and at every step of the criminal process.

Similarly, the court concluded that due process is not violated by the automatic transfer statute, although the trial court is not required to make an individualized determination whether a minor should be transferred and subjected to adult sentencing. The court acknowledged that automatic transfer of minors of a certain age to adult court may not be good policy, but held that only the legislative branch can determine whether a policy that meets constitutional requirements should be changed.

2. In dissent, Justice Appleton found that the mandatory transfer of 15 and 16-year-olds to adult court violates **Miller v. Alabama** because the trial court is not permitted to make an individualized determination whether a particular minor should be transferred to adult court.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

People v. Reyes, 2015 IL App (2d) 120471 (No. 2-12-0471, 5/6/15)

Defendant, who was 16 years old at the time of the offense, was convicted of first degree murder and two counts of attempt first degree murder. He was sentenced 45 years imprisonment for first degree murder and 26 years for each count of attempt murder, all sentences to run consecutively for a total of 97 years. Defendant would have to serve 89 years of that term and would not be eligible for MSR until he was 105 years old.

Defendant argued that his 97-year sentence was a *de facto* natural life sentence that would be unconstitutional under **Miller v. Alabama**, 132 S.Ct. 2455 (2012). The Appellate Court disagreed, declining to extend **Miller** to this case. Unlike the **Miller** defendants, who were sentenced to natural life without the possibility of parole based on single murder convictions, here defendant received consecutive sentences based on multiple counts and multiple victims. Moreover, “defendant did not receive the most severe of all possible penalties, such as the death penalty or life without the possibility of parole.”

Defendant’s sentence was affirmed.

(Defendant was represented by Assistant Defender Kathy Hamill, Elgin.)

People v. Toney, 2011 IL App (1st) 090933 (No. 1-09-0933, 9/19/11)

Where a minor was at least 15 years of age at the time of the offense and is charged with certain offenses, including first-degree murder, such “charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.” 705 ILCS 405/5-130(1)(a). If a minor is convicted of any offense “covered by” §5-130(1)(a), the minor may be sentenced as an adult. 705 ILCS 405/5-130(1)(c)(i). If a minor is convicted of an offense “not covered” by §5-130(1)(a), the minor must be sentenced as a juvenile unless the State timely requests a hearing to determine if the minor should be sentenced as an adult. An offense “covered by” §5-130(1)(a) includes both charges specified in that section, as well as “all other charges arising out of the same incident.” **People v. King**, 241 Ill.2d 374, 948 N.E.2d 1035 (2011).

Defendant was charged with first-degree murder as an adult, but was convicted of second-degree murder. Second-degree murder is a lesser mitigated offense of first-degree murder, requiring proof of all of the elements of first-degree murder plus the presence of a

mitigating factor. While second-degree murder is not one of the offenses listed in §5-130(1)(a), it is a charge “covered by” that section, because it necessarily arose out of the same incident as the first-degree murder charge. Therefore, the State was not required to request a hearing to determine whether the defendant should be sentenced as an adult before defendant could be sentenced as an adult for second-degree murder.

Although **King** involved a guilty plea, §5-130(1)(c)(i) by its terms applies both “after trial or plea,” and there is no indication in the statute or the **King** decision that the “covered by” language applies differently in either circumstance. Neither the statute nor **King** limits the statute’s application to charges formally charged in the charging instrument that arise out of the same incident. Moreover, the State did not need to separately charge defendant with second-degree murder in order to obtain a conviction for that offense, as it was defendant’s burden to prove the mitigating factor that would reduce the offense to second-degree murder.

(Defendant was represented by Assistant Defender Daniel Mallon, Chicago.)

[Top](#)

§33-6(e)

Extended Juvenile Jurisdiction (EJJ)

In re M.I., 2013 IL 113776 (No. 113776, 5/23/13)

1. The Extended Juvenile Jurisdiction (EJJ) statute requires that a hearing be conducted on a motion to designate a proceeding as an EJJ proceeding within 60 days of the filing of the motion. 705 ILCS 405/5-810(2). Because the 60-day limitation is directory rather than mandatory, the failure to comply with that provision of the statute does not invalidate the EJJ determination.

2. The Extended Juvenile Jurisdiction (EJJ) statute does not violate **Apprendi v. New Jersey**, 530 U.S. 466 (2000). An EJJ hearing does not adjudicate guilt or determine a specific sentence. The trial court only makes a procedural determination whether a juvenile should receive an adult sentence that is stayed pending successful completion of a juvenile sentence. The stayed sentence is based on the criminal offense for which the juvenile was convicted by the finder of fact and does not exceed the maximum for the offense provided by the Code of Corrections.

(Respondent was represented by Assistant Defender Emily Filpi, Chicago.)

In re C.C., 2015 IL App (1st) 142306 (No. 1-14-2306, 1/6/15)

Under the extended juvenile jurisdiction statute (705 ILCS 405/5–810), upon a finding of guilty the trial court must impose a juvenile court sentence and a conditional adult criminal sentence. If the minor successfully completes the juvenile sentence, the adult sentence is vacated.

If the minor commits a new offense, the adult sentence must be implemented. In addition, if the juvenile violates the conditions of the juvenile sentence in some way other than by committing a new offense, the trial court has discretion to revoke the juvenile sentence and implement the adult sentence.

Defendant was committed to Department of Juvenile Justice until he was 21, with a conditional adult sentence of 45 years in the Department of Corrections. He appealed, arguing that the 45-year-sentence violated the Eighth Amendment and the proportionate penalties

provision of the Illinois Constitution.

The court concluded that because the State had not filed a petition to revoke the stay on the adult sentence or accused the minor of violating the conditions of his juvenile sentence, the minor had not suffered any injury due to the adult sentence. Therefore, he lacked standing to challenge that sentence.

(Defendant was represented by Assistant Defender Heidi Lambros, Chicago.)

In re E.W., 2015 IL App (5th) 140341 (No. 5-14-0341, 2/23/15)

A juvenile prosecution for an offense that would be a felony if committed by an adult may be designated as an extended jurisdiction juvenile (EJJ) prosecution. 705 ILCS 405/5-810. An EJJ prosecution has two components. First, the trial court imposes a juvenile sentence which applies unless its terms are violated. Second, the court imposes an adult sentence that is stayed on the condition that the minor complies with the juvenile sentence.

Defendant was adjudicated delinquent after he pleaded guilty in an EJJ proceeding. After defendant entered a guilty plea on the juvenile portion of the proceeding, a negotiated five-year probation term was imposed as the juvenile sentence. Defendant then entered an open plea to the adult portion of the EJJ proceeding. The trial court imposed an adult sentence of 15 years imprisonment and lifetime MSR.

Defendant was subsequently found to have violated the conditions of the juvenile probation term on the ground that he failed to comply with sex offender counseling when he refused to admit that he was guilty of acting in an inappropriate manner. The trial court revoked the juvenile sentence and imposed the 15-year adult sentence.

1. The court concluded that where the juvenile sentence was revoked and the adult sentence placed in effect, the minor had standing under the Post-Conviction Hearing Act to challenge the voluntariness of his guilty plea. Although the Post-Conviction Hearing Act is not generally applicable in juvenile proceedings, when the trial court imposed an adult prison sentence the case was brought within the scope of the post-conviction act.

2. In addition, the post-conviction petition presented the gist of a constitutional issue in that the minor's plea was involuntary due to the trial court's failure to give proper admonishments during the juvenile portion of the plea. The court found that defendant was improperly admonished concerning the right to a jury trial, the minimum and maximum sentences, the MSR requirement, and the right to persist in a plea of not guilty. The court acknowledged that during the guilty plea admonishments for the adult sentence the trial court attempted to correct the erroneous admonishments that had been made in the juvenile portion of the proceeding. However, it concluded that the errors were not corrected where the minor had already entered his plea on the juvenile portion and was not asked whether he wished to persist in that plea.

The trial court's order summarily dismissing the post-conviction petition was reversed and the cause remanded for further proceedings.

(Defendant was represented by Assistant Deputy Defender Amanda Horner, Mt. Vernon.)

In re M.I., 2011 IL App (1st) 100865 (No. 1-10-0865, 12/23/11)

1. 705 ILCS 405/5-810(2) provides time limits for a hearing on the State's motion to designate a juvenile proceeding as an extended jurisdiction proceeding. Under §810(2), the trial court "shall" conduct a hearing within 30 days after the motion is filed, or within 60 days upon a showing of good cause for the delay.

The Appellate Court concluded that the time limitation was intended to be directory

only. Thus, the failure to hold a timely hearing did not prohibit the trial court from subsequently conducting a hearing and granting the motion for an EJJ proceeding.

2. The minor, who was adjudicated delinquent under the EJJ statute and given both a juvenile sentence and a stayed adult sentence to be imposed only if he failed to successfully complete the juvenile sentence, lacked standing to challenge the constitutionality of the EJJ statute. The minor claimed that the statute was unconstitutionally vague because it failed to give sufficient notice of the conduct which would result in violation of the juvenile sentence and imposition of the stayed adult sentence. The minor also claimed that the statute lacked sufficient guidelines for the trial court to determine whether the juvenile sentence should be revoked.

A party has standing to challenge the constitutionality of a statute only if he has sustained or is in danger of sustaining a direct injury as a result of the statute. Because there had been no allegation that the respondent had violated the juvenile sentence and no reason to believe that the stayed adult sentence would ever be imposed, the court concluded that the challenge was premature. Thus, defendant lacked standing to challenge the constitutionality of the statute until such time as he was required to serve the adult sentence.

(Defendant was represented by Assistant Defender Emily Filpi, Chicago.)

In re Omar M., 2012 IL App (1st) 100866 (No. 1-10-0866, 6/29/12)

The Extended Jurisdiction Juvenile Prosecutions (EJJ) statute allows imposition of both a juvenile sentence and an adult criminal sentence on a juvenile where the court has designated the proceeding as an EJJ proceeding. The designation may be made where the prosecution files a petition alleging commission of a felony offense by a minor 13 and older where the court finds probable cause to believe that the allegations in the petition are true. The minor may rebut the presumptive EJJ designation with clear and convincing evidence that sentencing as an adult would not be appropriate. A minor who is the subject to an EJJ prosecution has the right to a public trial by jury. The adult sentence is stayed, but the stay can be revoked if the minor violates the conditions of the juvenile sentence or commits a new offense. 705 ILCS 405/5-810.

1. The EJJ statute does not violate **Apprendi v. New Jersey**, 530 U.S. 466 (2000). First, EJJ prosecutions are not adjudicatory, but dispositional. The EJJ procedure does not determine the minor's guilt or the specific sentence he will receive. It only determines the forum in which his guilt may be adjudicated. Adjudicatory hearings are subject to the due process requirement of proof beyond a reasonable doubt. Dispositional hearings are not.

Second, even if **Apprendi** did apply to EJJ prosecutions, the statute is constitutional. **Apprendi** requires that any fact other than the fact of a prior conviction that increases the penalty beyond the prescribed statutory maximum be submitted to a jury and proved beyond a reasonable doubt. The statutory maximum for **Apprendi** purposes is not the maximum punishment allowed in the juvenile system. It is the sentence allowed in criminal court. Moreover, in an EJJ prosecution, a jury is required to find every element required for the statutory sentence beyond a reasonable doubt.

2. To survive a vagueness challenge, a law must provide people of ordinary intelligence with the opportunity to understand what conduct is prohibited, and it must provide a reasonable standard to law enforcement officials and to the judiciary to prevent arbitrary and discriminatory legal enforcement.

The EJJ statute explicitly provides that the minor may be required to serve the adult sentence if he violates the "conditions" of his sentence, and shall be required to serve the adult sentence if he commits a new "offense." Where the court orders provisions such as probation

or drug counseling in addition to a juvenile detention term, those provisions are part of the EJJ prosecution “conditions.” Where no provisions are imposed other than detention, the term “conditions” refers only to the minor’s completion of the sentence and adherence to the Department of Corrections rules and regulations during that time. “Offense” is equally plain and unambiguous, meaning “criminal offense,” or “all international, federal, or state offenses that are considered criminal within the State of Illinois.” There is no precedent for finding a different vagueness standard for statutes related to juveniles.

Therefore, the EJJ statute is not unconstitutionally vague.

(Respondent was represented by Assistant Defender Heidi Lambros, Chicago.)

[Top](#)

§33-6(f)

Probation and Supervision

§33-6(f)(1)

Generally

In re Danielle J., 2013 IL 110810 (No. 110810, 12/19/13)

Under 705 ILCS 405/5-615(l) and **In Veronica C.**, 239 IL 2d 134, 940 N.E.2d 1 (2010), a minor may request a continuance under supervision in a juvenile case before an adjudication of delinquency is made, provided that the minor stipulates to facts supporting the petition and there is no objection by the minor, a parent, a guardian, or the prosecutor. Here, the minor rejected the State’s pretrial offer of a continuance under supervision, but requested such a continuance after she was adjudicated delinquent.

The trial court indicated that had the State’s Attorney not objected, it would grant a continuance under supervision. The trial court then found that the provision of the statute requiring the State’s Attorney’s consent to a continuance under supervision was unconstitutional. The State appealed.

1. The Illinois Supreme Court found that the minor lacked standing to challenge the constitutionality of the requirement that the State’s Attorney consent to a continuance under supervision. Because the minor was adjudicated delinquent before her attorney requested the continuance, and a continuance under supervision is statutorily precluded once an adjudication occurs, a continuance under supervision could not have been granted even had the prosecutor agreed. Because she was not adversely affected by the State’s Attorney’s objection to a continuance under supervision, the minor lacked standing.

2. However, the court concluded that defense counsel was ineffective for failing to request a continuance under supervision when it could have been granted, and that the trial court committed plain error where it believed that a continuance under supervision was the appropriate disposition but failed to broach the subject until a continuance was statutorily precluded.

The court remanded the cause for a new first-phase hearing at which the minor is to be properly advised that if she proceeds to trial and is unsuccessful, a continuance of supervision will be subject to the State’s Attorney’s approval. The minor will then be in a position to make an informed and knowing decision whether to accept the pretrial offer of a continuance under supervision, if that offer is reinstated. If she elects to go to trial, the minor

will be able to request a continuance under supervision before the adjudication is announced.

In re Derrico G., 2014 IL 114463 (No. 114463, 8/4/14)

Under §5-615 of the Juvenile Court Act, the State may object to the entry of an order of continuance under supervision in a juvenile case. 705 ILCS 405/5-615. The circuit court held that this statutory provision was unconstitutional both facially and as applied because it: (1) was arbitrarily enforced in violation of due process; (2) violated the separation of powers clause of the Illinois constitution; and (3) violated equal protection.

The Illinois Supreme Court reversed the circuit court's ruling, holding that the statute was neither facially unconstitutional nor as applied to defendant.

1. For a statute to be facially unconstitutional, there must be no set of circumstances under which the statute would be valid. If a statute is constitutional as applied to a defendant, it usually cannot be challenged on the ground that it might be unconstitutional as applied to others. In other words, if the statute is constitutional as applied to defendant, "his facial challenge necessarily fails."

2. Prosecutorial discretion is firmly entrenched in American law. The Supreme Court noted that several of its cases have held that courts may not require prosecutors to defend their decision to seek the death penalty. If prosecutors have discretion to seek the death penalty, then they clearly have discretion to object to supervision.

Additionally, several factors show that the prosecutor's decision to object to supervision was justified in this case, including: (1) the nature of the offense, (2) battery of a police officer; (3) defendant's prior criminal conduct and pending charges; (4) defendant's family environment, which was not conducive to helping defendant stay out of trouble; (5) defendant's failure to acknowledge the seriousness of the offense; and (6) the fact that this case involved a negotiated guilty plea, where the State dismissed certain charges and recommended a sentence of probation in exchange for the plea.

Taking all these facts into account, the Supreme Court concluded that it was "quite frankly inconceivable that anyone could find" the State's exercise of discretion in this case to be arbitrary and a violation of due process.

3. The separation of powers clause of the Illinois Constitution provides that none of the three branches of government "shall exercise powers properly belonging to another." Ill. Const. 1970 art. II, §1. The purpose of this provision is to ensure that the whole power of more than one branch does not reside in the same hands. But the provision was not designed to achieve a complete divorce among the three branches, and it does not divide governmental powers into rigid, mutually exclusive compartments. The three branches are parts of a single operating government and there will be areas where their functions overlap. As such, the separation of powers clause was not designed to effect a complete divorce between the branches.

The defendant argued that the prosecution's discretion to object to supervision infringed on the circuit court's sentencing authority. The Supreme Court rejected this argument, noting that it had previously decided that a statute which allowed prosecutors to decide when a juvenile would be subjected to prosecution as an adult did not violate separation of powers even though the statute gave the prosecution significant discretion to dictate the range of penalties to which a juvenile would be subject. The discretionary authority afforded the prosecution by §5-615 "pales by comparison."

Furthermore, under the version of the statute in effect here, the court may only continue the case under supervision before proceeding to adjudication. Thus, the State's objection must also occur before adjudication. Since defendant had not been adjudicated when the State objected and sentencing was not an issue, the State did not infringe on the court's

right to impose sentence.

4. The equal protection clause requires the government to treat similarly situated individuals in a similar fashion unless it can demonstrate an appropriate reason to treat them differently. But the clause does not forbid the legislature from drawing proper distinctions among different categories of people unless it does so on the basis of criteria wholly unrelated to the legislation's purpose.

Defendant argued that equal protection was violated by the State's right to object to juvenile supervision but not adult supervision. The court rejected this argument on a number of grounds.

First, defendant could not show that he was similarly situated in all relevant aspects to the adult offenders he compared himself to. Equal protection does not forbid all classifications, only those that apply different treatment to people who are alike in all relevant respects. Here, defendant was not similarly situated to adult offenders charged with a felony, because such adult offenders are not eligible for supervision at all.

Second, defendant entered into a fully negotiated guilty plea. Having received significant consideration in return for his plea, defendant could not repudiate the very sentence he agreed to on the basis that it violated equal protection. The court found that defendant's position violated fundamental principles of fairness in the enforcement of guilty pleas.

Third, minors in delinquency proceedings are not comparable to adult offenders because they are generally not subject to the same deprivation of liberty. Delinquency proceedings are protective and intended to correct and rehabilitate rather than to punish. That difference extends to the role of the State.

The dissent would have held that as applied to this case, §5-615 violated the separation of powers clause. The circuit court had already accepted defendant's guilty plea when it continued the case under supervision. Although the circuit court did not enter a finding of guilt, the acceptance of the guilty plea was itself a conviction. Conviction marks the traditional boundary beyond which the State's constitutionally permissible role in decisions affecting sentencing comes to an end. Accordingly, the State's objection to supervision violated the separation of powers doctrine.

In re Veronica C., 239 Ill.2d 134, 940 N.E.2d 1 (2010)

1. Juvenile delinquency proceedings are comprised of three distinct stages: the findings phase, the adjudicatory phase, and the dispositional phase. The findings phase consists of a trial to determine whether the minor is guilty as charged and should be adjudged delinquent. In a juvenile delinquency case, a finding of guilt and a finding of delinquency are equivalent.

If a finding of delinquency is entered, the matter proceeds to sentencing, which consists of the adjudication and dispositional phases. At the adjudication phase, the trial court determines whether it is in the best interests of the minor and the public to make the minor a ward of the court. At the dispositional phase, the trial court fashions an appropriate sentence to serve the best interests of the minor and the public.

2. The trial court may order a continuance under supervision until such time as the proceeding reaches the adjudicatory stage. An order of continuance under supervision requires that the minor admit the facts supporting the petition and that no objection be raised by the minor, his or her parents, guardian, or legal custodian, the minor's attorney, or the State's Attorney. (705 ILCS 405/5-615 (1), (2)).

3. Where the trial court had found the respondent guilty and set the cause for the adjudicatory and dispositional phases, the point at which a continuance of supervision could

be ordered had passed. Thus, although the State objected to supervision when asked by the trial court, supervision could not have been granted even had the State consented.

4. Because a party may raise a constitutional challenge to a statute only if it affects him, the minor respondent lacked standing to argue that the separation of powers doctrine and equal protection are violated by 705 ILCS 405/5-615, which allows the State to block the trial court from granting a continuance under supervision.

(Defendant was represented by Assistant Defender Steve Wiltgen, Elgin.)

In re Michael D., 2015 IL App (1st) 143181 (No. 1-14-3181, 3/20/15)

Except where a Supreme Court rule provides for an interlocutory appeal, the Appellate Court only has jurisdiction to review final judgments. In criminal cases, the final judgment is the sentence. Similarly, in juvenile cases, the final judgment is the dispositional order. The Appellate Court held that an order of continuance under supervision entered after a finding of delinquency in a juvenile case was not a final judgment.

The trial court may terminate juvenile supervision at any time, and may also vacate the finding of delinquency, if warranted by the conduct of the minor and the ends of justice. Under these circumstances, there was no final judgment providing the Appellate Court with jurisdiction.

Defendant's appeal was dismissed for lack of jurisdiction.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

In re Rodney S., 402 Ill.App.3d 272, 932 N.E.2d 588 (4th Dist. 2010)

1. The Appellate Court rejected the argument that a *per se* conflict of interest exists when counsel for a minor-respondent acts in the dual capacity of defense attorney and guardian *ad litem*. The court acknowledged that out-of-state case authority and articles cited by respondent supported that argument, but adhered to view that no conflict exists because proceedings under the Juvenile Court Act are not adversarial in nature. The welfare and best interests of the minor are paramount and it is counsel's duty to protect those interests even if they do not correspond to the wishes of the minor.

2. The term of probation for a delinquent minor may not exceed five years or until the minor reaches the age of 21, whichever is less. An exception to that rule is where the minor is found guilty of a forcible felony. 705 ILCS 405/5-715(1). A forcible felony is defined by the Criminal Code in pertinent part as an "aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any other individual." 720 ILCS 5/2-8.

The minor-respondent was found guilty of aggravated battery based on contact of an insulting or provoking nature, and was sentenced to an 11-year term of probation. The Appellate Court concluded that the conviction did not qualify as a forcible felony that would authorize an 11-year probation term. The aggravated battery did not qualify as a forcible felony under the residual clause because that category was intended to refer to felonies not otherwise specified in the statute. The statute had previously included all aggravated batteries without qualification within the definition of forcible felonies, but had been amended to limit the types of aggravated battery that could qualify as a forcible felony. The Appellate Court acknowledged that there was a split among the districts on this issue, with the Third District holding that any aggravated battery qualified as a forcible felony, **People v. Jones**, 226 Ill.App.3d 1054, 590 N.E.2d 101 (3d Dist. 1992), and the First and Second Districts holding that only the limited category of aggravated battery specified by the statute qualified as a forcible felony. **In re Angelique**, 389 Ill.App.3d 430, 907 N.E.2d 59 (2d Dist. 2009); **People**

v. Schmidt, 392 Ill.App.3d 689, 924 N.E.2d 998 (1st Dist. 1992). The Fourth District concluded that the decisions of the First and Second Districts were better reasoned.

The court vacated the 11-year probation term as void and remanded for resentencing. (Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re Shatavia S., 403 Ill.App.3d 414, 934 N.E.2d 502, 2010 WL 3330897 (5th Dist. 2010)

Based on her admission, the court placed respondent on supervision for one year, with conditions of community service and restitution. 705 ILCS 405/5-615(a) allows a court to enter an order of continuance under supervision for certain offenses upon an admission by the minor and before proceeding to adjudication.

The Appellate Court rejected the State's argument that there was no final judgment from which an appeal could be taken because the case was continued under supervision. The judgment appealed was not an adjudication of delinquency, but the conditions of supervision. Supreme Court Rule 604(b) authorizes an appeal from an order of supervision by a defendant who seeks review of the conditions of supervision.

(Respondent was represented by Assistant Defender Paige Strawn, Mt. Vernon.)

[Top](#)

§33-6(f)(2)

Conditions of and Revocation/Termination of

In re Shelby R., 2013 IL 114994 (No. 114994, 9/19/13)

Under 705 ILCS 405/5-710(1)(b), a minor may be committed to the Department of Juvenile Justice only if a term of incarceration is permitted by law for adults who are found guilty of the offense for which the minor was adjudicated delinquent. In addition, 705 ILCS 405/5-710(7) limits the term of commitment for a minor to the maximum sentence which an adult could receive for the same act. The court concluded that because an adult cannot be convicted of the offense of unlawful consumption of alcohol by a minor, and therefore cannot be incarcerated for that offense, a minor who is placed on probation for unlawful consumption of alcohol by a minor cannot be committed to the Department of Juvenile Justice upon revocation of her probation.

The court rejected the argument that other provisions of the Juvenile Court Act permit incarceration of minors upon revocation of probation, finding that such provisions concern the pre-adjudication incarceration of minors who are accused of violating court orders. In addition, even if a juvenile could be incarcerated for violating a court order, the record showed that the minor was incarcerated not for violating the probation order, but on the offense for which probation had been imposed - unlawful consumption of alcohol by a minor.

Because the trial court lacked authority to commit the respondent to the Department of Juvenile Justice upon revocation of her probation for unlawful consumption of alcohol, the order committing the minor to the Department of Juvenile Justice was reversed.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

In re: Austin S., 2015 IL App (4th) 140802 (No. 4-14-0802, 2/9/15)

Under the Juvenile Act, the court may place a minor who has been adjudicated guilty of an offense in detention for up to 30 days. 705 ILCS 405/5-710(1)(a)(v). The Juvenile Act defines detention as the temporary care of a minor who requires secure custody for his or the

community's protection in a facility designed to physically restrict the minor's movements. 705 ILCS 405/5-105(5).

Here the trial court ordered, as a condition of defendant's probation, that he successfully complete the Adams County Juvenile Detention Center Treatment Program. The treatment program is designed to last about 90 days although some participants stay in the program longer. The Appellate Court held that the trial court's order was void since it mandated a period of detention that exceeded 30 days.

In **Christopher P.**, 2012 IL App (4th) 100902, the court concluded that time spent in the same treatment program at issue in this case was properly classified as custody for sentence credit purposes. The court found that under the treatment program a minor had a legal duty to submit to state authority, his freedom of movement was restricted by locked doors, he was subject to the same policies and conditions as other detention center residents, including solitary confinement and strip searches, and was completely integrated with the other detention center residents.

Based on **Christopher P.**, the Appellate Court held that the treatment program constituted detention as defined by the Juvenile Act. The treatment program, given its regimented structure, surveillance, and lack of privacy, was no different than any other juvenile detention facility. The trial court's order was thus unauthorized and void since it exceeded 30 days.

(Defendant was represented by Assistant Defender Janieen Terrance, Springfield.)

In re B.P.D., 2014 IL App (3d) 120781 (No. 3-12-0781, 1/23/14)

Under 705 ILCS 405/5-720(4), upon revocation of probation a minor may receive any sentence that was available at the time of the initial sentence. 705 ILCS 405/5-710(1)(a)(v) authorizes a juvenile sentence of 30 days detention, but requires that the detention be served in a juvenile detention home.

Therefore, a detention sentence ordered upon revocation of juvenile probation must be served in a juvenile detention home. Where the minor was sentenced to five years probation when he was 15, and that probation was revoked when he was 20, the trial court erred by ordering a sentence of five days in the county jail.

Defendant's five-day jail sentence was vacated.

(Defendant was represented by Assistant Defender Jay Wiegman, Ottawa.)

[Top](#)

§33-7

Appellate Concerns

§33-7(a)

Post-Trial, Post-Plea, and Post-Sentencing Motions in Juvenile Court

In re Gennell C., 2012 IL App (4th) 110021 (No. 4-11-0021, 5/3/12)

The purpose of a motion to reconsider sentence in a delinquency case is not to conduct a new sentencing hearing, but to review the appropriateness of the sentence imposed and to correct any errors.

The Juvenile Court Act allows the minor or any person interested in the minor to apply to the court for a change in custody of the minor and the appointment of a new custodian or

guardian or the restoration of the minor to the custody of the minor's parents or former guardian or custodian. No custodian or guardian may be removed without his or her consent until given notice and an opportunity to be heard. 705 ILCS 405/5-745(3). This provision can apply where the court appoints the Department of Juvenile Justice (DOJJ) as the guardian for the minor.

A motion to reconsider sentence does not include a request for change in custody under §5-745(3).

After the court adjudicated respondent delinquent and sentenced her to an indeterminate term in the DOJJ, respondent filed a motion to reconsider sentence, asserting that the court had committed errors at the sentencing hearing and that the sentence was excessive. It asked that the court reconsider the sentence and did not present any new evidence.

On appeal from the denial of the motion to consider, the respondent asserted that the court erred in denying her motion for a change of sentence under §5-745(3). Because respondent only asked the court to reconsider her sentence, and did not expressly move or apply for a change in custody under § 5-745(3), the circuit court did not err in refusing to re-evaluate respondent's commitment to the DOJJ.

(Defendant was represented by Assistant Defender Catherine Hart, Springfield.)

[Top](#)

§33-7(b)

Other

In re B.C.P., 2013 IL 113908 (No. 113908, 6/20/13)

Supreme Court Rule 660(a), governing appeals in delinquent minor cases, incorporates the criminal appeals rules, but only as to final judgments. Supreme Court Rule 662 allows for certain interlocutory appeals in juvenile cases, but an order granting a motion to suppress is not one of them. Therefore, the provision of Supreme Court Rule 604(a)(1) allowing the State to appeal from an order granting a motion to suppress does not apply to juvenile cases under existing appellate rules.

Exercising its rulemaking authority, the Illinois Supreme Court held that Rule 660(a) should be modified to allow the State to appeal from an interlocutory order suppressing evidence in a juvenile delinquency proceeding. Since the adoption of Rule 660(a), the General Assembly has radically altered the Juvenile Court Act to make the juvenile adjudicatory process more criminal in nature. As a consequence, juveniles receive many of the same protections that criminal defendants receive. In light of this shift, the State has the same interests in appealing a suppression order in a juvenile case that it does in a criminal case: obtaining correction of errors that would otherwise be precluded by the double jeopardy clause; avoiding unfairness in allowing errors favoring the State to be corrected while not allowing correction of errors favoring the defense, resulting in distortion of the development of the law; and eliminating frustration of the primary purpose of a trial—to ascertain the truth of the charges.

Given the compelling case for the need for interlocutory review of suppression orders in juvenile cases, the supreme court saw no need to defer the matter to the rules committee. Extending the expedited appeal process provided by Supreme Court Rule 660A to State appeals from suppression orders adequately addressed any concern that delays caused by

appeals could interfere with the rehabilitation of the minors.

(Respondent was represented by Assistant Defender Gabrielle Green, Ottawa.)

In re B.C.P., 2012 IL App (3d) 100921 (No. 3-10-0921, 1/23/12)

In general, the Appellate Court only has jurisdiction to review an appeal from a final judgment, and does not have jurisdiction to review an interlocutory appeal unless jurisdiction is specifically provided by Supreme Court Rule.

Two Supreme Court Rules provide for appeals in juvenile delinquency proceedings: Rule 660(a) and Rule 662. Rule 660(a) provides that “[a]ppeals from final judgments . . . shall be governed by the rules applicable to criminal cases,” except where otherwise specifically provided. Rule 662 provides for interlocutory appeals, but only under very limited circumstances—when a dispositional order has not been entered within 90 days from either an adjudication of wardship or a revocation of probation or conditional discharge.

The State sought to appeal from an order granting a motion to suppress the statement of a minor in a juvenile delinquency proceeding. Neither Rule 660(a) nor Rule 662 authorize an interlocutory appeal from such an order.

The court refused to read Rule 660(a) to incorporate Rule 604(a)(1), which authorizes the State to appeal from a suppression order in a criminal case. While Rule 660(a) incorporates the rules applicable to criminal cases, it does so only in the context of appeals from final judgments. A suppression order is not a final judgment. Where the language of the rule was clear and unambiguous, the court could not read into Rule 660 exceptions, limitations, and conditions that the drafters did not intend. If the drafters of the rules had intended to allow an interlocutory appeal from a suppression order in a juvenile proceeding, they would have so provided in Rule 662.

The court dismissed the State’s appeal for lack of jurisdiction.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

In re C.C., 2015 IL App (1st) 142306 (No. 1-14-2306, 1/6/15)

Under the extended juvenile jurisdiction statute (705 ILCS 405/5–810), upon a finding of guilty the trial court must impose a juvenile court sentence and a conditional adult criminal sentence. If the minor successfully completes the juvenile sentence, the adult sentence is vacated.

If the minor commits a new offense, the adult sentence must be implemented. In addition, if the juvenile violates the conditions of the juvenile sentence in some way other than by committing a new offense, the trial court has discretion to revoke the juvenile sentence and implement the adult sentence.

Defendant was committed to Department of Juvenile Justice until he was 21, with a conditional adult sentence of 45 years in the Department of Corrections. He appealed, arguing that the 45-year-sentence violated the Eighth Amendment and the proportionate penalties provision of the Illinois Constitution.

The court concluded that because the State had not filed a petition to revoke the stay on the adult sentence or accused the minor of violating the conditions of his juvenile sentence, the minor had not suffered any injury due to the adult sentence. Therefore, he lacked standing to challenge that sentence.

(Defendant was represented by Assistant Defender Heidi Lambros, Chicago.)

In re Henry B., 2015 IL App (1st) 142416 (No. 1-14-2416, 1/26/15)

In general, the Appellate Court has jurisdiction to review final judgements. However,

it lacks jurisdiction to review an interlocutory order unless jurisdiction is afforded by Supreme Court rule. Two rules authorize appeals in juvenile cases. Rule 660(a) provides for appeals from final judgments, and Rule 662 allows an appeal from an interlocutory order where no dispositional order has been entered in 90 days.

The court concluded that where a continuance under supervision is ordered under 705 ILCS 405/5–615 without a finding of guilt or a judgment order, neither Rule 660(a) nor Rule 662 authorizes an appeal. Because the Appellate Court lacked jurisdiction, the appeal was dismissed.

In re Joshua B., 406 Ill.App.3d 513, 941 N.E.2d 1032 (1st Dist. 2011)

The Appellate Court found no error where the trial court did not advise a minor respondent in a delinquency proceeding that he had a right to testify, or verify that he knowingly and voluntarily waived that right, based on law applicable to adult criminal proceedings. See **WITNESSES**, §57-5.

The Appellate Court rejected the argument that, because juvenile offenders have no right to file post-conviction petitions, they should be provided greater protections than adult criminal defendants. The same concerns regarding interference with the attorney-client relationship that weigh against adoption of a requirement that a trial judge advise a criminal defendant of his right to testify also weigh against such a requirement for a juvenile offender, who is required to be represented by counsel.

The court further directed that if the minor respondent communicates to appellate counsel that his trial counsel did not advise him of his right to testify, appellate counsel should include that assertion in the appellant's brief even though that claim has no support in the record, noting that the matter is outside of the record and that he is unable to raise the matter before the trial court. This would allow the State to respond to the claim, and provide the Appellate Court with a basis to determine whether to consider the claim.

(Defendant was represented by Assistant Defender Brian Carroll, Chicago.)

In re Michael D., 2015 IL App (1st) 143181 (No. 1-14-3181, 3/20/15)

Except where a Supreme Court rule provides for an interlocutory appeal, the Appellate Court only has jurisdiction to review final judgments. In criminal cases, the final judgment is the sentence. Similarly, in juvenile cases, the final judgment is the dispositional order. The Appellate Court held that an order of continuance under supervision entered after a finding of delinquency in a juvenile case was not a final judgment.

The trial court may terminate juvenile supervision at any time, and may also vacate the finding of delinquency, if warranted by the conduct of the minor and the ends of justice. Under these circumstances, there was no final judgment providing the Appellate Court with jurisdiction.

Defendant's appeal was dismissed for lack of jurisdiction.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

In re Raheem M., 2013 IL App (4th) 130585 (No. 4-13-0585, 12/10/13)

1. A court may commit a delinquent minor to the Department of Juvenile Justice, if it finds that "commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement." 705 ILCS 405/5-750(1)(b).

The trial court did not comply with this requirement prior to committing respondent

to the DOJJ. The court had no evidence before it of efforts made to locate less restrictive alternatives and did not state the reasons why such efforts were unsuccessful. Merely reciting such findings in a form order is insufficient to comply with the statute. “Actual efforts must be made, evidence of those efforts must be presented to the court, and, if those efforts prove unsuccessful, an explanation must be given why the efforts were unsuccessful.” References in the social history report to available community resources if the respondent were sentenced to probation did not suffice where those resources were never even contacted with regard to respondent.

2. Sentencing errors can be reviewed for plain error where the evidence was closely balanced or the error was sufficiently grave that the defendant was deprived of a fair sentencing hearing. Because the requirements of 705 ILCS 405/5-750(1)(b) ensure that trial courts treat DOJJ sentences as a last resort, failure to comply with those requirements is such a serious error that the appellate court may excuse forfeiture based on the second prong of plain-error analysis. The appellate court was mindful that respondent had no other means of relief from this error given the state of the law regarding whether juveniles are entitled to seek relief under the Post-Conviction Hearing Act.

3. The appellate court was also troubled by the trial court’s *sua sponte* decision to detain respondent after trial and prior to sentencing. The court made this decision without much information regarding respondent other than that he had been expelled from school as a result of the case before it. This was respondent’s first case in juvenile court. He lived with his mother and stepfather, with whom he had a good relationship. He was convicted of aggravated battery of a teacher based on evidence that he threw a chair at a student during a brawl involving several students in the school cafeteria. The chair made incidental contact with a teacher and no serious injuries resulted. As a consequence of the court’s decision to detain, respondent missed his scheduled GED examination.

4. A trial court may not consider a factor inherent in the charged offense in aggravation at sentencing.

Respondent committed what normally would be classified as a simple battery but which became an aggravated battery due to the victim’s status and the location of the incident. The trial judge improperly allowed these same factors to impact its sentencing judgment as aggravating factors.

5. The appellate court also criticized the emphasis that the trial court placed on the criminal history of respondent’s biological father, which was exhaustively covered in the social history investigative report. Respondent should not be punished for the crimes of his father. These crimes had no relevance especially because respondent had no contact with his father, who was incarcerated out of state.

The appellate court vacated respondent’s commitment to the DOJJ and remanded for a hearing in compliance with 705 ILCS 405/5-750(1)(b).

Steigmann, J., dissented. While the sentencing hearing was “lacking,” based on his “understanding of this record,” he disagreed that application of the plain-error doctrine was appropriate.

(Defendant was represented by Supervisor Arden Lang, Springfield.)

In re Shatavia S., 403 Ill.App.3d 414, 934 N.E.2d 502, 2010 WL 3330897 (5th Dist. 2010)

Based on her admission, the court placed respondent on supervision for one year, with conditions of community service and restitution. 705 ILCS 405/5-615(a) allows a court to enter an order of continuance under supervision for certain offenses upon an admission by the minor and before proceeding to adjudication.

The Appellate Court rejected the State's argument that there was no final judgment from which an appeal could be taken because the case was continued under supervision. The judgment appealed was not an adjudication of delinquency, but the conditions of supervision. Supreme Court Rule 604(b) authorizes an appeal from an order of supervision by a defendant who seeks review of the conditions of supervision.

(Respondent was represented by Assistant Defender Paige Strawn, Mt. Vernon.)

People v. Henderson, 2011 IL App (1st) 090923 (No. 1-09-0923, 11/17/11)

With certain limited exceptions, a minor under 17 years of age at the time of an alleged offense may not be prosecuted under the criminal laws of Illinois. 705 ILCS 405/5-120. One such exception is where a minor who at the time of the offense was at least 15 years of age and who is charged with an offense under §401 of the Controlled Substances Act while on a public way within 1000 feet of the real property comprising a school. 705 ILCS 405/5-130(2)(a). A criminal conviction of such a minor where a violation of §401 is committed within 1000 feet of a school, but not on a public way, is void because the court lacks the power to impose a criminal conviction where the Juvenile Act mandates a juvenile adjudication.

Defendant pleaded guilty to a violation of §401 committed within 1000 feet of a school, but that offense does not require as an element that it be committed on a public way. It could not be determined whether defendant's indictment included a public-way allegation because the indictment was not included in the record on appeal. Construing any doubts arising from the missing indictment against the defendant, defendant did not demonstrate that his conviction was void.

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

[Top](#)

§33-8

Freedom of the Press and Privacy Issues

[Top](#)

§33-9

Miscellaneous Matters

In re S.B., 2012 IL 112204 (No. 112204, 10/4/12)

1. As a matter of first impression, the Supreme Court held that 725 ILCS 5/104-25(a), which provides an "innocence only" proceeding where a criminal defendant is unfit to stand trial and there is no substantial likelihood that fitness will be restored within one year, is incorporated into the Juvenile Court Act despite the fact that the Act does not refer to an "innocence only" proceeding where a juvenile is unfit. 705 ILCS 405/5-101(3) provides that in delinquency cases, minors have the procedural rights of adults in criminal cases unless rights are specifically precluded by laws which enhance the protection of minors. Because the fitness procedures in the Code of Criminal Procedure are intended to safeguard the due process rights of criminal defendants, and the Juvenile Court Act does not provide greater protections for unfit minors, §104-25(a) applies in delinquency proceedings.

2. The court also concluded that a minor who is found "not not guilty" in a discharge

hearing is required to register under the Sex Offender Registration Act. Section 2 of the Act, in its relevant parts, defines a “sex offender” as a person who is charged with a sex offense and “is the subject of a finding not resulting in an acquittal” at a discharge hearing under 725 ILCS 5/104-25(a), or who is adjudicated delinquent based on an act which would constitute one of several criminal offenses if committed by an adult. Because §104-25(a) is incorporated into the Juvenile Court Act, and a person who is found “not not guilty” is not acquitted, registration is required under the plain language of the Registration Act.

3. The court noted, however, that only juveniles who are found delinquent are allowed to petition to terminate their sex offender registration upon showing that the minor poses no risk to the community. (730 ILCS 150/3-5(c),(d)). Because a literal interpretation of the relevant statutes would result in an unfit minor who has been found “not not guilty” being unable to petition to terminate registration, and thus having fewer rights than juveniles who were actually adjudicated delinquent, the court concluded that the legislature could not have intended to exclude juveniles who were found “not not guilty” from seeking termination of the sex offender registration. The court noted that it has authority to read into statutes language omitted by oversight, and elected to correct the legislature’s oversight by allowing juveniles who are found “not not guilty” to seek termination of the sex offender registration requirement under the same conditions as minors adjudicated delinquent for sex offenses.

The court also found that the legislature made a similar oversight with respect to the limitations that are contained in the Sex Offender Community Notification Law (730 ILCS 152/121) related to the dissemination of sex offender registration information with respect to adjudicated delinquents. It held that §121 of that Act should be read to include juveniles found “not not guilty” following a discharge hearing.

In re Samantha V., 234 Ill.2d 359, 917 N.E.2d 487 (2009)

1. The court reiterated that the “one-act, one-crime” rule applies in juvenile proceedings.

A charging document which fails to differentiate between separate acts which could arguably provide the basis for separate convictions is viewed as having charged the same conduct under different theories of liability. Because the petition did not differentiate between separate acts of the minor, and at trial the State failed to elicit any testimony or make any argument based on separate conduct, adjudications of delinquency for aggravated battery causing great bodily harm and aggravated battery on a public way were deemed to have been based on the same conduct. Thus, the “one-act, one-crime” doctrine was violated.

2. Where multiple convictions or adjudications are entered in violation of the “one-act, one-crime” doctrine, the respondent should be sentenced only for the most serious offense. Generally, the most serious offense is the one for which the legislature authorized the greater sentence. If the sentences are identical, the more serious offense is the one carrying the more culpable mental state. Where identical punishments are imposed and the same mental state is involved for both offenses, the cause should be remanded for the trial court to determine which offense is more serious.

3. In order to preserve a claim of error for review, a minor must object at trial. However, minors are not required to file post-adjudication motions. (See also **WAIVER – PLAIN ERROR – HARMLESS ERROR**, §§56-1(a), 56-2(b)(6)(a).)

In re S.B., 408 Ill.App.3d 516, 945 N.E.2d 102 (3d Dist. 2011)

The Sex Offender Registration Act provides that a person who is charged with a sex offense, found unlikely to be fit to stand trial within one year, and not “acquitted” at a

discharge hearing is required to register as a sex offender. (730 ILCS 150/2(A)(1)(d)). Section 150/2(A)(5) provides that a juvenile is required to register as a sex offender only if he is adjudicated delinquent for an act which would constitute an act which would require an adult to register. The court concluded that the plain language of the statute showed that the legislature intended that only juveniles who are adjudicated delinquent are required to register.

Thus, a juvenile who is charged with a sex offense, found unlikely to be fit to stand trial within one year, and found “not not guilty” at a discharge hearing is not required to register. The court stated that an absurd result would occur if such juveniles were required to register, because under 730 ILCS 150/3-5 they would be unable to petition the circuit court to have the sex offender registration terminated, although juveniles adjudicated delinquent can do so.

(Defendant was represented by Assistant Deputy Defender Verlin Mainz, Ottawa.)

In re Vincent K., 2013 IL App (1st) 112915 (No. 1-11-2915, 12/12/13)

1. The Appellate Court reiterated precedent that minors who are adjudicated delinquent do not have a right to relief under the Post-Conviction Hearing Act. **In re R.R.**, 75 Ill.App. 3d 494, 394 N.E.2d 75 (2nd Dist. 1979); **In re A.W.H.**, 95 Ill.App 3d 1106, 420 N.E.2d 1041 (5th Dist. 1981). The court acknowledged that amendments to the Juvenile Court Act enacted in 1999 shifted the focus of the Act from the overriding goal of rehabilitation to protection of the public and holding juveniles accountable for violating the law. However, the court rejected the argument that juvenile proceedings are now akin to criminal proceedings and that the Post-Conviction Hearing Act should therefore apply. In the course of its holding, the court noted that the Post-Conviction Hearing Act requires that a petitioner have a “conviction” and be “imprisoned in the penitentiary,” neither of which apply to delinquents.

2. The court rejected the argument that equal protection would be violated if post-conviction procedures are not afforded to persons who are adjudicated delinquent under the extended juvenile jurisdiction statute (705 ILCS 405/5-810). To be adjudicated delinquent under EJJ, the trial court must find probable cause to believe that a minor is at least 13 years old and has committed an offense which would be a felony if committed by an adult. A minor who is adjudicated under EJJ receives both a juvenile sentence and an adult sentence. The adult sentence takes effect only if the minor violates the terms of the juvenile sentence.

The court concluded that because persons adjudicated delinquent under the EJJ statute are not similarly situated to adults who are imprisoned after being convicted of a crime, the failure to afford post-conviction relief to EJJ minors does not create an equal protection violation. The court noted that unlike an adult offender, an EJJ minor does not have a criminal “conviction” even if his adult sentence becomes effective.

3. The court rejected the argument that post-conviction procedures should be afforded to minors adjudicated delinquent because such persons have no collateral remedy by which to challenge “fundamental unfairness.” The court stated that the relationship between courts and minors subject to the Juvenile Court Act is that of *parens patriae*, and that courts therefore have a duty to intervene in juvenile cases where substantial injustice occurs.

People v. Jardon, 393 Ill.App.3d 725, 913 N.E.2d 171 (1st Dist. 2009)

1. In order to impose an adult sentence on a minor who was prosecuted as an adult but convicted only of an offense for which adult prosecution is not mandatory, the State must request adult sentencing by a written motion filed within 10 days after the verdict is returned. (705 ILCS 405/5-130(1)(c)(ii)). As a matter of plain error, juvenile sentencing was required where the State filed its request for criminal sentencing more than 30 days after the verdict

was returned. The court found that the 10-day requirement is mandatory rather than directory, and that an adult sentence imposed pursuant to an untimely request is void rather than merely voidable.

2. In addition, a minor who is convicted in an adult prosecution solely for offenses which are not subject to mandatory adult prosecution is regarded as a delinquent minor, and does not have a criminal conviction.

(Defendant was represented by Assistant Defender Pamela Rubeo, Chicago.)

People v. Pacheco, 2013 IL App (4th) 110409 (No. 4-11-0409, 6/24/13)

1. In **Roper v. Simmons**, 543 U.S. 551 (2005), the Supreme Court held that the Eighth Amendment bars capital punishment for juvenile offenders. In **Graham v. Florida**, 560 U.S. 48 (2010), the court held that a life sentence without the possibility of parole violates the Eighth Amendment when imposed on juvenile offenders for crimes other than homicide. In **Miller v. Alabama**, 567 U.S. ___, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), the court concluded that the Eighth Amendment prohibits a sentencing scheme which mandates a life sentence without the possibility of parole for juvenile offenders, even those convicted of homicide.

The court concluded that under the reasoning of **Roper**, **Graham** and **Miller**, neither the Eighth Amendment nor the proportionate penalties clause of the Illinois Constitution are violated by the Illinois statute mandating the transfer of juveniles who are at least 15 and who are charged with first degree murder (705 ILCS 405/5-130(1)(a)(i)), the automatic imposition of an adult sentence on a juvenile who is subject to the automatic transfer statute, or the application of truth-in-sentencing provisions to minors who are convicted of murder by accountability. The court concluded that the Supreme Court cases concerned only two sentences, death and life without the possibility of parole. The decisions do not require that legislatures and courts treat youths and adults differently in every respect and at every step of the criminal process.

Similarly, the court concluded that due process is not violated by the automatic transfer statute, although the trial court is not required to make an individualized determination whether a minor should be transferred and subjected to adult sentencing. The court acknowledged that automatic transfer of minors of a certain age to adult court may not be good policy, but held that only the legislative branch can determine whether a policy that meets constitutional requirements should be changed.

2. In dissent, Justice Appleton found that the mandatory transfer of 15 and 16-year-olds to adult court violates **Miller v. Alabama** because the trial court is not permitted to make an individualized determination whether a particular minor should be transferred to adult court.

(Defendant was represented by Assistant Defender Jacqueline Bullard, Springfield.)

People v. Rich, 2011 IL App (2d) 101237 (No. 2-10-1237, 11/3/11)

The State filed a criminal complaint charging defendant, who was 20 years old, with two counts of aggravated criminal sexual assault occurring when defendant was between 12 and 14 years old. Three months later, while defendant was still 20, he was charged by indictment with the same offenses.

When defendant turned 21, the State filed a superseding indictment charging the same offenses. The trial court granted a motion to dismiss the indictment, finding that because defendant was at most 14 when the offenses were committed, he could be prosecuted only under the Juvenile Court Act. Under **In re Luis R.**, 388 Ill.App.3d 730, 924 N.E.2d 990 (2d Dist. 2009), delinquency proceedings may not be commenced against an adult regardless of his

or her age at the time of the offense.

The Appellate Court affirmed the dismissal of the indictment.

1. First, under 720 ILCS 5/6-1, a criminal conviction cannot be entered for an offense which occurred when the defendant was under the age of 13. Thus, the trial court properly dismissed an indictment which alleged that defendant committed aggravated criminal sexual assault when he was 12 years old.

2. Alternatively, the trial court properly dismissed the indictment concerning offenses allegedly committed when the defendant was 13 or 14. The Juvenile Court Act (705 ILCS 405/5-120) governs crimes committed by minors who were under the age of 17 at the time of the offenses. Unless one of four exceptions apply, acts committed by a minor are not subject to criminal prosecution.

The four exceptions include: (1) violations of traffic, boating, or fishing and game laws; (2) offenses subject to automatic transfer provisions which mandate adult prosecution for specified offenses where the minor was at least 15 years old at the time of the offense; (3) where the State successfully moves to transfer the offense to adult criminal court; and (4) where the State successfully moves to extend juvenile court jurisdiction, which permits the imposition of a sentence under the Code of Corrections in addition to a sentence under the Juvenile Court Act, with the adult sentence stayed so long as offender complies with the juvenile sentence.

Because the alleged offenses occurred when the defendant was 13 or 14, the automatic transfer exception did not apply. Although aggravated criminal sexual assault is subject to automatic transfer when the defendant was 15 at the time of the offenses, the court concluded that the General Assembly did not intend to apply the automatic transfer provisions to crimes which were committed by minors under the age of 15, even if the defendant has become an adult by the time the charges are initiated.

3. Furthermore, neither the third nor fourth exceptions applied where the State failed to file timely motions to either transfer the cause to adult court or to extend juvenile jurisdiction. The court stressed that the State would not have been left without a remedy had it acted properly. The State first filed criminal charges some six months before defendant turned 21; had it instituted juvenile proceedings instead, it would have had ample time before defendant turned 21 to seek either transfer to adult court or extended juvenile jurisdiction. Under either scenario, the proceedings could have continued after the defendant reached 21. “[W]hile the State is correct that it was not *required* to file against defendant an initial petition or a motion to transfer or extend jurisdiction under the Act, its failure to do so precludes prosecution after defendant’s twenty-first birthday.”

4. The court declined to decide whether a defendant who has turned 21 can be charged with an automatic transfer offense which was committed when the defendant was 15 or older.

[Top](#)